

1 PROCEEDINGS

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3 MS. METCALF: Thank you all for coming. My name is
4 Cheryl Metcalf. I'm the UI policy and training manager, and
5 I will be your friendly facilitator today.

6 We might have a few more people drift in if anybody
7 wants to move forward. Can you hear me okay?

8 We have mics all over the place. We're doing some new
9 things, so you'll see some changes today.

10 First I would like to introduce the staff that's here.
11 We are all here and available for any kind of questions you
12 might have during breaks if you want to approach us. Some
13 of us can better answer questions about benefits, and some

14 of us can answer the tax questions, and there are a few here
15 who can answer both.

16 First of all, I would like to introduce Juanita Meyers
17 our rules coordinator. She will be addressing you today
18 regarding the rules. And I think most of you are familiar
19 -- I'm seeing a lot of faces who have worked through this
20 rules process with us before.

21 Next, I want to introduce Susan Harris. Susan has
22 recently joined the UI division after being in one of our
23 other divisions for a long time. She has got a good, strong
24 legislative background, and she knows the rules. And we are
25 delighted to have her with us.

1

1 Sitting over on the other side is Marcie Johnson, who

2 is not a agency employee. But as you can see, she is a
3 court reporter. And this is something new and different.
4 And after I finish introductions I will go into that a
5 little bit.

6 In the back of the room we have Sam Simpson from our
7 tax division. We have Keith Black also from our tax
8 division and Hao Duong from tax.

9 Judy Johnson I want to introduce. Judy is our
10 legislative coordinator for the division. And I said tax on
11 the people in the back of the room, and in the front of the
12 room we have the benefits people. And Judy has worked
13 through this legislation on both ends and can probably
14 answer just about any question you have.

15 So that's who's in the room now. And we anticipate
16 that Elena Perez from our tax division will be joining us
17 sometime this morning. And since we're not going to be

18 heavy into the tax stuff until later in the morning, she
19 will be here by then.

20 And what I would like to do is talk to you a little bit
21 about this process. And those of you who have been to these
22 hearings before know that they are quite informal. We sit
23 around casually, and we get your input. We answer
24 questions. And it's pretty causal.

25 Juani ta and I sit usually and scribble notes all day.

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1 And she takes both sets of notes, which she usually can't
2 read mine. She takes both sets and makes a document out of
3 them and sends it out to all of you.

4 Since this legislation has really some substantial
5 changes, the story I told last time is that I have worked at

6 this agency forever, and I have seen little changes here and
7 little changes there. I have never in all the years I have
8 been here seen anything anywhere close to the significance
9 of these changes.

10 We take them very seriously. It's the law. We have a
11 lot of questions and your input is really important, so we
12 want everything to be recorded.

13 So we will ask you to identify yourself as you speak.
14 We still want this to be informal, though. We want
15 everything to be on the record.

16 I have the best job in the house. I get to carry the
17 hand mic, and I'm very excited. I have never done that
18 before. I'm training for a new career, so be patient with
19 me while I do that.

20 And we will go around -- and Juanita will talk to you
21 about the process when it's her time to take this over.

22 So that's the reason this may seem a little more
23 formal. And we were expecting a few more people who aren't
24 here, but we are delighted to see all of you here.
25 So could we go around and just do a brief introduction?

3

1 Could you tell us who you are? Can we start with you,
2 Wendy?

3 MS. RADER-KONOFALSKI: Yes. Wendy Rader-Konofalski
4 with the Washington Federation of Teachers.

5 MR. JEFF JOHNSON: Jeff Johnson with the Washington
6 State AFL-CIO.

7 MS. CRONE: I am Pamela Crone representing Northwest
8 Women's Law Center and the Washington State Coalition
9 Against Domestic Violence.

10 MS. MARANVILLE: Deborah Maranville. I'm at the
11 Unemployment Compensation Clinic and some other departments
12 at the University of Washington, M-A-R-A-N-V-I-L-L-E.

13 MS. METCALF: Could we get people to, as you say your
14 name, please spell your last name for the court reporter.

15 MS. GREINER: My name is Lynn Greiner, G-R-E-I-N-E-R,
16 and I'm the director of the Unemployment Law Project.

17 MS. PEABODY: Hello. I'm Monica Peabody. I'm with the
18 Welfare Rights Organizing Coalition; that's P-E-A-B-O-D-Y.

19 MS. BACIGALUPO: I'm Gina Bacigalupo with NECA,
20 B-A-C-I-G-A-L-U-P-O.

21 MS. JOHNSON: Judy Johnson; Employment Security
22 Department.

23 MS. RYAN: Mary Beth Ryan, R-Y-A-N. I am with ICM.

24 AUDIENCE MEMBER: What's ICM?

25 MS. RYAN: Integrated Claims Management.

1 MR. RICHARDSON: Ed Richardson; Boiler Makers Local No.
2 502, R-I-C-H-A-R-D-S-O-N.

3 MR. CRUME: Pat Crume; UI Tax System Liaison.

4 MR. BLACK: Keith Black; experience rating/benefit
5 charging unit UI tax.

6 MS. BENSON: Cody Benson; the Association of Washington
7 Business; it's B-E-N-S-O-N.

8 MR. SIMPSON: Sam Simpson with Employment Security the
9 information technology services division; that's
10 S-I-M-P-S-O-N.

11 MS. REINMUTH: Jill Reinmuth with the House Commerce
12 and Labor Committee staff; that's Reinmuth, R-E-I-N-M-U-T-H.

13 MS. CLAUSON: I'm Kim Clauson, C-L-A-U-S-O-N,

14 representing the Washington Restaurant Association.

15 MS. GEE: I'm Jan Gee, G-E-E, representing the
16 Washington Retail Association and the Washington Food
17 Industry.

18 MR. TUVEY: I'm Dale Tuvey from United Claims
19 Management.

20 MR. PEARSON: I'm Tim Pearson, P-E-A-R-S-O-N. Pacific
21 Northwest Regional Counsel of Carpenters.

22 MR. DAVE JOHNSON: Dave Johnson, J-O-H-N-S-O-N, and I'm
23 here on behalf of the Washington State Building and
24 Construction Trade Counsel as well as the Iron Workers Local
25 No. 86.

1 MS. LOGUE: Carolyn Logue. I'm the state director for
2 the National Federation of Independent Business; that's
3 L-O-G-U-E.

4 MR. SEXTON: I'm Dan Sexton -- is this thing on? Dan
5 with the Washington State Association of Plumbers, Pipe
6 Fitters, and Sprinkler Fitters.

7 MS. METCALF: I will get better as the day goes on.
8 Has everybody signed in? Okay.

9 I will need to tell you about the areas in this
10 facility that you might need. There are, like, pop machines
11 out that door. The restrooms are out this door and to the
12 right through the double doors.

13 Now, be patient with me. I have to give you a brief
14 spiel. Those of you who were at the last one already heard
15 it, but I will be fast.

16 Everybody's aware of the legislation that passed in
17 June -- the significance of it, the volume of it. We have

18 had a really busy time in Employment Security picking it
19 apart. What does this mean? How do we do this?

20 That's why you are here. We need your input. We need
21 your help on how to implement this legislation, how to
22 define some of the questions that we have, what needs to go
23 in rule and what's perfectly clear. Juanita's been sending
24 you some information. And we have a lot of questions, and I
25 hope you have the answers.

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1 We understand that there are people who are very much
2 in support of this and others who are very much opposed to
3 this and some in between. We want to hear from all of you,
4 what you have to say.

5 We are going to do it in a call-on-you manner today, so
6 that we can get the input from all of you. What you do say
7 will be part of the official record recorded by the court
8 reporter. It will go into our final decision making.

9 And we hope that you have taken a minute to read the
10 ground rules so that we can get through this smoothly and
11 quickly. Last time we had seven and it took us all day --
12 seven stakeholders and we were nine to four to get finished.
13 And there are more of you here today, so we are going to try
14 to move it along a little bit. That's why we're asking you
15 to ask questions of us during breaks. And Juanita will be
16 generous with breaks today, right Juanita?

17 MS. MEYERS: Right.

18 MS. METCALF: She's going to go through everything
19 section by section. And I'm going to let her talk to you
20 about her process of doing that today, because it's a little
21 different than what we did last time. So I'm just going to

22 skip over that and let her tell you. And we will be very
23 busy, and it's time to get started. You are on.

24 MR. JEFF JOHNSON: Just one question and perhaps it's
25 coming up. Will you refresh our memories on the time

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1 horizons on these rules?

2 MS. METCALF: Certainly.

3 MR. JEFF JOHNSON: The date when these formal written
4 comments need to be submitted and when you come back with
5 drafts.

6 MS. MEYERS: Sure.

7 MS. METCALF: Before that can I say one more thing?
8 You reminded me. I forgot my special interest part of this

9 process and then you are on.

10 As you know, most of this legislation takes effect in
11 January. And we have all the policy to determine the rules.
12 We have to retrain all of our staff. We have to rewrite all
13 of our manuals and all of our working documents and on and
14 on and on. And we have a very short time to do it, so we
15 are on a fast track. Thank you for reminding me.

16 MS. MEYERS: When you speak can you please state your
17 name again for the record, just so the court reporter can
18 correctly identify who is speaking. You don't need to say
19 who you are representing again, just give your name.

20 Today what we are going to do is go through the
21 legislation section by section. I will state briefly what
22 the law was prior to this, what the changes are, and then
23 ask for comments. And at that time Cheryl will go around.
24 Please raise your hand, and she will get to you and just ask
25 you to make your comments for the record on that particular

1 section.

2 A couple of the sections, for example, the voluntary
3 quits, I will probably break into two segments just because
4 it's so long and the changes are so substantial. I want to
5 -- don't want to get to the end and have people forget what
6 they were going to say at the beginning.

7 We will ask, again, to please state your name again
8 whenever you speak each time just so we correctly identify
9 who is speaking.

10 I will be working from a list that you have that is
11 entitled "Issues for Potential Rule Making." And what that
12 is, it is not intending to state -- it is not representing

13 the department's opinion or anything else pro or con or
14 anything regarding that section of the legislation.

15 What it is is staff in our division sat down and worked
16 through -- read through each of the sections and identified
17 those areas where we had questions where we think their
18 might be a need to resolve those questions through rule
19 making to define terms and so on.

20 There are a number of terms that are used in the
21 statute that we do not have defined, and there are new
22 terms. And so we don't have any existing case law behind
23 what those different terms mean.

24 And so as we go through you can follow along with those
25 questions. And you may have more questions than those we

1 have identified here. And, please, when it's your turn to
2 -- when you are called on feel free to bring those up.

3 We are anticipating this meeting -- we may have a third
4 stakeholders meeting in the Seattle area. I don't know yet.
5 We have had a couple requests from people who are in that
6 area who couldn't make it down here today.

7 But regardless, even if that meeting occurs, certainly
8 the input would be considered, but we are going to need to
9 start next week with at least outlining what some of the
10 rules are going to be. Simply because, as Cheryl said, we
11 have a short turnaround time to do this.

12 What we will do is first we will send out an outline of
13 where we will be going with each of the rules without the
14 rule-making language, just so you can see, "Okay, we think
15 voluntary quits, 'reasonable period of time' means this."
16 And that's how we will do it and then give you time to

17 comment on that as we are drafting the actual language of
18 the proposed rules.

19 We will get those back out to you. And we will have an
20 additional round of meetings at that time when you actually
21 have draft rules in hand that you can take a look at and
22 comment on. We hope to have that, I would say, in October.
23 It might be late October but -- just because of the time
24 frame we are working under we will hope to have those late
25 October, get out for another round of meetings, and take

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1 your comments on the draft rules we will have at that time
2 and come back and get them back and get them into some kind
3 of shape, based on the comments we receive at the meetings.

4 We will, of course, take all of your comments into

5 consideration as we draft the rules. You are free to submit
6 written comments at any time.

7 After we get the rules drafted and come back and talk
8 to you and look at them again is when we will file the rules
9 we have for a formal public hearing, which is more of a
10 formal process where we actually say, "These are the rules
11 we are proposing, and is there public comment on these?"
12 You can submit written testimony or you can appear at the
13 hearing, whichever you choose.

14 We may not get the rules finalized by the end of the
15 year, in which case -- well, we will almost certainly not
16 get the rules finalized before the end of the year, simply
17 because of the time frame around how long you have to
18 publish notices.

19 We will then likely be in a situation of adopting
20 emergency rules towards the end of December. But at that

21 point we hope that those emergency rules are what has
22 resulted from the various stakeholder meetings so that
23 there's not a surprise to anybody as to what's in the
24 emergency rules. And those emergency rules are only good
25 for 180 days, so that will give us time to get through the

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1 process.

2 MS. CRONE: Just a point of clarification. You will be
3 getting out a draft the end of October, and there will be
4 another round of meetings then. These meetings will be
5 different from the formal meetings during which you will
6 actually be talking about adopting a rule; is that correct?

7 MS. MEYERS: Right. The meeting where we will have the
8 draft rules is another meeting like this where we will share

9 our draft with you and ask for input. "This is the text we
10 have come up with. What are your thoughts? Have we
11 completely missed the point, or what is going on here?"

12 Okay.

13 The other piece you have is a packet of materials
14 stapled together, and it has handwritten in the corner
15 "Section 4." Those are just a separate handout, and I have
16 labeled the section they go with. And I will identify them
17 as we go through the section.

18 Of course, not all the sections were those which we
19 felt needed rule making. The first section is simply an
20 amendment to the preamble of the unemployment compensation
21 title. The amendment simply strikes out the sentence that
22 said, "The title shall be liberally construed for the
23 purpose of reducing involuntary unemployment and the
24 suffering caused thereby." We didn't have any rule making

25 that was associated with that particular section.

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1 Did people have any comments or questions about that
2 one? Okay.

3 The second section is tax, but it's in order. And,
4 again, we are not proposing any rules on that. That section
5 is very clear. It simply provides that stock options are
6 not included or reportable as wages. And that's effective
7 after the end of this year.

8 MR. JEFF JOHNSON: And so there is no rule making on
9 that portion?

10 MS. MEYERS: No.

11 MR. JEFF JOHNSON: Since you do not now collect
12 information on stock options, do you know how you are going

13 to go about doing that?

14 MS. MEYERS: They are going to notify employers to
15 simply stop reporting any stock options as wages.

16 The third section is the first one we had a couple of
17 questions on. And that is amending the statute which
18 requires that a person to be able to collect unemployment
19 benefits be able to work, immediately available for work,
20 and actively seeking work.

21 The new section provides that for claims that are filed
22 January 4, 2004, or later the individual who is subject to a
23 labor agreement or dispatch rules must -- their search for
24 work in compliance with customary trade practices must be in
25 accordance with that particular agreement or rules.

1 The term "labor agreement" is not defined in this
2 section. And this section also simply says "individual."
3 We weren't certain who was the intended audience for this
4 rule. Clearly people who are members of referral unions
5 would be covered by this because they are subject to
6 dispatch rules.

7 But it doesn't limit it to referral union members.
8 There may be other labor agreements in place that govern how
9 an individual looks for work. Such as, there are people who
10 signed noncompete agreements when they were employed. Is
11 that a labor agreement? And exactly what was intend by this
12 particular section? We weren't certain how we should define
13 the term "labor agreement." Any comments or questions or
14 input on that section?

15 MS. GEE: I believe it was the intent for that to be a
16 negotiated labor agreement that we would commonly view as a

17 labor agreement.

18 I don't recall that the issue of the noncompete clause
19 ever came up, so I don't think there was ever an intent to
20 change what the department currently does on noncompete
21 clauses. I would be interested in knowing what the
22 department does currently.

23 MS. BACIGALUPPO: I agree that was a negotiated labor
24 agreement. I had worked with our lobbyist on that language
25 for that reason.

14

1 MS. MEYERS: Thank you. Was there another comment?

2 MR. DAVE JOHNSON: Our understanding through
3 negotiations was the same as what's already been talked

4 about.

5 And just so there's no -- you have already said it, but
6 for the record -- you know, our position is that any
7 collective bargaining agreement and full referral status or
8 union status be maintained for dispatch rules and as they
9 apply, just exactly what's written. But that's critical for
10 us to maintain the full union referral status within the
11 system.

12 MS. MEYERS: Thank you.

13 And, actually, in quick answer to Jan's question
14 regarding the noncompete clauses, generally what -- if an
15 individual is in a particular field and they are separated
16 from their employer for whatever reason and they sign a
17 noncompete agreement so that they can't work in that
18 particular field within a certain number of miles, we would
19 either expect that they expand their search beyond that or
20 look for work in another field, because they would still

21 have to look for work.

22 We don't enforce the noncompete agreement. That's
23 between the employer and the employee. But we simply -- if
24 they say, "Well, I can't do that particular job in that area
25 anymore for two years because I have signed a noncompete

15

1 agreement," then we would say, "You have to look for other
2 types of work or look for work outside that area." Okay?

3 I'm going to move on if that's all the input we have
4 for Section 3.

5 I'm going to move on to Section 4. I am going to break
6 that into at least two pieces. And then I will go through a
7 number of sections and then stop and ask for input on those

8 sections and then do the second half.

9 This again applies to claims that are effective January
10 4, 2004, or later, not to separations after that date, but
11 to claims filed after that date. So an individual who has a
12 current claim for -- files a claim in November, but then is
13 moved to another job or quits and goes to another job in
14 March of next year would still be subject to the old statute
15 because their claim is effective prior to January 4. So we
16 will be running two statutes simultaneously for about a
17 year, which makes our training of staff a little more
18 difficult. But we will get there.

19 There are a couple of significant differences in this
20 section than from previous sections. First off, under the
21 previous law, an individual who quits work for marital or
22 domestic reasons to -- they lose child care, they have
23 family situations that they have to take care of, or they
24 move with a spouse who's getting a new job, et cetera.

25 What the previous law provided was that those

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1 individuals were still disqualified from benefits, but they
2 would requalify by reporting in person to their local work
3 service office in ten different weeks and certify that they
4 were able and available and actively searching for work each
5 week.

6 That provision is gone. There is no separate
7 requalifying provision for individuals who leave work for
8 marital and/or domestic reasons. Those individuals face the
9 same disqualification which is -- they are disqualified for
10 a minimum of seven weeks and until they earn seven times
11 their weekly benefit amount. So there's no separate purge

12 or disqualification for marital and/or domestic separation.
13 Everybody gets the same one. We call it the seven-by-seven
14 requalification requirement.

15 Another significant change in this piece is that the
16 previous statute provided that an individual could have good
17 cause for leaving work if there was substantial
18 deterioration in the work. And that depended on each
19 particular situation. And there was quite a body of case
20 law built up as to what exactly constituted a substantial
21 deterioration of the working conditions.

22 The working conditions that now meet the definition of
23 "substantial deterioration of work" are now defined in
24 statute. They spell out the number of conditions that
25 constitute a deterioration of working conditions.

1 There are ten reasons listed that an individual has
2 good cause for leaving work and ten only. And to be found
3 to have left work with good cause, an individual's reason
4 must fall within the parameters of those ten guidelines.
5 This removes a great deal of discretion from the department
6 in determining whether an individual has good cause or not.

7 As I said, I'm going to go through the first of these
8 sections, and then I will get back to you and open it up for
9 comments.

10 The first reason that an individual can be found to
11 have left work for good cause is the same as in current law.
12 If an individual left to receive a bona fide offer of work.
13 And that means basically they leave one job for another job,
14 but the second job also has to be covered by unemployment
15 insurance.

16 The second section is a change. And you will see on
17 the issues section that we have a couple of questions
18 regarding this, which is an individual who leaves work
19 because of illness or disability. That's currently in the
20 statute, but the new statute has some additional
21 requirements for that.

22 The individual is required to pursue reasonable
23 alternatives; to preserve their employment status by
24 requesting a leave of absence. They have to notify their
25 employer of the reason for the absence and promptly request

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1 reemployment when they are again able to go back to work.

2 Of course, they don't have to do this if it's what they
3 call a futile act: if they know their employer doesn't

4 offer leaves of absence in any circumstances, or whatever
5 circumstances would make doing so futile, or where the
6 futility of the act is the result of a recognized labor
7 management dispatch system. And that's where individuals
8 have an agreement that certain people can work, and so on.
9 It's something that's negotiated in their contract.

10 However, the additional section on this says that, The
11 claimant must also have terminated their employment status
12 and are not entitled to be reinstated to the same or
13 comparable or similar position when they are again able to
14 return to work. "In addition, the individual must terminate
15 their employment status and not be entitled to be reinstated
16 to the same or similar or comparable position."

17 We had a little difficulty interpreting this section.
18 Because first off, it requires an individual to ask for a
19 leave of absence. However, based on this second clause, if

20 they get the leave of absence, they are not eligible for
21 benefits because they have return rights.

22 So it sounds to us like the only people who would get
23 benefits under this section are those people whose employers
24 don't offer a leave of absence and don't offer return rights
25 to jobs. So they will generally be small employers.

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1 So it was kind of a catch 22 for the claimant that,
2 yes, they have to ask for a leave of absence, but if they
3 don't get it, they do not get benefits. If they don't ask
4 for it, they don't get benefits. So those who get benefits
5 are, as I said, the employers who don't offer any source of
6 leave of absence.

7 And we have a couple of questions on this. You know,

8 was that the intent to only pay that small group of people
9 who don't get benefits?

10 Can I get you to hold your questions just until the end
11 of this one section, and then I will get back to you.

12 And the other piece is, what ramifications does this
13 have for the State? And you can't answer this, but just to
14 let you know we are looking at this -- or also the
15 employers. That's why we will be addressing that -- if the
16 requirement is that an individual, to obtain unemployment
17 benefits, has to give up their rights guaranteed to them
18 under federal law to return to work. And so that's
19 something we are looking at.

20 Hold your questions and I will be right with you.

21 The third piece I'm going to talk about real quickly is
22 mandatory transfers. Current law says that an individual
23 who quits work to accompany a spouse who is leaving due to a

24 mandatory transfer by their employer has good cause for
25 leaving work if their spouse was mandatorily transferred by

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1 the employer.

2 The new statute limits that to only people where the
3 spouse was transferred because of a mandatory military
4 transfer that's outside the existing labor market area and
5 the transfer is to Washington or another state that allows
6 benefits for people in similar circumstances.

7 We have done a preliminary survey of all the other
8 states, and it looks like there are only 14 states that
9 allow benefits under this condition. So it's going to be a
10 fairly small group of individuals who are going to be
11 eligible under this section. The military spouse has to be

12 transferred to one of those 14 states or to another area of
13 Washington to be eligible under this.

14 It doesn't appear to include people who are discharged
15 and who are returning to their home of record. They served
16 in Georgia, and they are now discharged and the military
17 will move them back to their home of record, but that's not
18 a mandatory transfer. They could stay in Georgia if they
19 chose to. So those people won't be covered. So if the
20 spouse quits to accompany their military husband or wife
21 back to their home of record, that's not good cause.

22 There are some states that we surveyed -- and that's
23 why I said our results were preliminary -- who allow
24 unemployment benefits to individuals who transfer militarily
25 from another country.

1 Say they are serving in Germany and their spouse worked
2 there for the federal government. If they are transferred
3 back to, again, Georgia, as an example, and the spouse
4 accompanied them, they would allow benefits only in that
5 circumstance because it's a transfer from out of country to
6 incountry. They don't allow regular military transfers,
7 like, from Washington to Georgia or California to South
8 Carolina. They don't allow it in those cases.

9 So our question had been, in that kind of limited
10 circumstance does that count as a state that allows benefits
11 for this purpose?

12 The last section I want to talk about now before I open
13 it up for questions is just to let you know that the next
14 good cause reason is that separation was necessary to
15 protect the claimant or a member of their immediate family

16 from domestic violence or stalking. And that has not
17 changed from what was passed last year.

18 If you have questions on these beginning sections,
19 please raise them now -- or comments.

20 MS. LOGUE: On the illness and disability, first of
21 all, yes, it was the intent to have unemployment insurance
22 -- then only to be able to qualify under voluntary quit if
23 they are not able to get a leave of absence from their
24 employers indicating that they would have to separate from
25 their employer in order to do this. Even some small

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1 employers I know will grant a leave of absence under certain
2 conditions, though they may not have formal policies.

3 Therefore there is an intent for that employee to be
4 able to go back to work and they have not lost their job.
5 So that was the intent to make sure that, yes, it was indeed
6 a separation from employment.

7 And I'm kind of surprised about the ramifications about
8 the federal state disability discrimination laws, because I
9 would imagine that for those who would qualify under the
10 family medical leave that it would supercede.

11 MS. MEYERS: And I am not saying that they are
12 violations of federal law. I'm saying we are looking into
13 it just to make sure.

14 MS. LOGUE: The other thing, on military transfers how
15 have you been handling this now as far as when people come
16 in from out of country or if they go to another country?
17 What do you for that benefit now?

18 MS. MEYERS: We would pay them.

19 MS. LOGUE: You would pay them.

20 MS. MEYERS: Yes.

21 MS. LOGUE: Under this situation if I recall the
22 deductions on this correctly, it was for them to be
23 reciprocal. So if there's no reciprocal unemployment
24 benefits paid, then, no, it probably wouldn't apply, if I
25 recall from the discussion.

23

1 MS. MEYERS: Okay.

2 MS. LOGUE: The intent was to make sure that UI
3 benefits our economy, so it's getting that reciprocal
4 relationship.

5 MS. MEYERS: Thanks.

6 MS. BACIGALUPPO: I'm wondering on the leave of absence

7 issue if they are off work whether or not they have been
8 granted a leave of absence and they are off because they
9 have a disability or need to care for a family member, they
10 are not eligible under availability, then, until they are
11 released; is that correct?

12 MS. MEYERS: That is correct.

13 MS. BACIGALUP0: So the issue is once they are
14 released, how do they handle that separation?

15 MS. MEYERS: They could get benefits if they had given
16 up their return rights and now they are looking for work.

17 MS. BACIGALUP0: Or if they are released and their
18 employer says, "No, we don't have work for you now."

19 MS. MEYERS: Correct.

20 MS. CRONE: Under current law if an individual gets a
21 leave of absence and they get a leave of absence because
22 they are not able to do their current work, they would be
23 eligible to receive benefits as long as they were looking

24 for work that was consistent with their illness or
25 disability. Under the new legislation will that still be

24

1 possible?

2 MS. MEYERS: It doesn't appear so. You are correct.
3 If somebody leaves work now, they have to be able and
4 available and actively seeking work.

5 I think where the controversy comes in is there are
6 people whose illness or pregnancy or whatever prevents them
7 from doing their current job but they can do work. Their
8 employer doesn't have other work for them. If they can do
9 other work and they are willing to seek other work, we will
10 pay them unemployment benefits.

11 What this does is -- to get unemployment benefits in
12 that situation they have to terminate their employment.

13 MS. CRONE: Okay.

14 MS. GREINER: Will there be anything in the rules with
15 respect to employers' duties to inform separating employees
16 that they need ask for a leave? My question is how will
17 workers know they are supposed to comply with these
18 requirements?

19 MS. MEYERS: I don't know. We haven't discussed that
20 part. There are a lot of pieces in here. Well, it's with
21 any of them. How will the claimant know that they didn't
22 have good cause for leaving work, because their wages were
23 cut 20 percent as opposed to 25? There is going to have to
24 be an educational campaign that we are going to have to
25 undertake.

1 But you're right. There's nothing in the state law
2 that -- we have notices that the employers have to post, and
3 we can certainly modify those. But we aren't like some
4 states where they have to say -- provide like a written
5 notice and say, "You have the right to unemployment
6 benefits," and "Do this type of thing."

7 There was more questions.

8 MS. MARANVILLE: I'm not clear whether this is an
9 issue, but I just want to make clear that the futility
10 provisions encompass individuals who are not with -- the
11 futility consists of inability -- it would be futile to
12 exhaust alternatives because they can no longer do the work
13 required by the individual.

14 We often see individuals who have medical problems, and

15 exhaustion would be irrelevant because the work exacerbates
16 their medical problems.

17 MS. MEYERS: Futility can cover -- it is case specific.
18 We can look and see would it have been futile or not to
19 request a leave of absence.

20 MS. BACIGALUPPO: When someone does quit based on that,
21 it is a nonwork-related issue. So if it's futile, which I
22 can understand that point, and they voluntarily quit because
23 of this medical issue, how is it adjudicated under the good
24 cause? And how are benefits paid?

25 MS. MEYERS: If they quit work now because they can't

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1 do that particular job anymore, again, if the individual is
2 still able to work and they are willing to actively seek

3 work, we would pay them unemployment benefits. It would
4 currently be a quit with good cause?

5 And in that situation it would probably still be a quit
6 with good cause under the new statute because they have
7 given up their return rights. Seeking a leave of absence
8 would have been futile because they simply can't do that
9 type of work anymore. They probably still would be paid.

10 MS. METCALF: Just a little clarification. We would
11 probably allow them under the good cause to quit, but then
12 we also do adjudication for the availability issues. So
13 there's two issues in those cases.

14 MR. TUVEY: I would like to ask if you have any
15 intention to continue the expectation that a person would
16 make every reasonable effort to preserve the employer/
17 employee relationship by informing the employer of what they
18 can or cannot do and asking for other work that the employer

19 might have that is within their limitations.

20 MS. MEYERS: It would be yes to the first two, no to
21 the third. The claimant has to take reasonable steps to
22 preserve their job in a statute that says including a leave
23 of absence. The courts have held that they do not have to
24 ask the employer for what other work the employer has
25 available. The claimant simply has to make the employer

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1 aware of their restrictions. And if there are other jobs,
2 the burden is on the employer to notify them.

3 MR. TUVEY: If I didn't state that, I was -- I know I
4 was incorrect. But the intention was if the employer offers
5 work that the person can't do, just because they couldn't do
6 the work that they were doing before it's now within the

7 limitations that they have given, whatever medical situation
8 they have, they will still be expected to accept that as
9 opposed to quitting with good cause.

10 MS. MEYERS: Sure. If it was suitable work, sure.

11 MR. TUVEY: All right. Thank you.

12 MS. GEE: I wanted to go back to the military transfer
13 and the question you proposed here about after completion of
14 their service and they return to their home of record,
15 because the new law is silent on that. But the old law used
16 the word "mandatory" transfer and was also silent on this
17 particular piece. So how have you been interpreting that?

18 MS. MEYERS: For the military?

19 MS. GEE: Uh-huh.

20 MS. MEYERS: I don't know. Cheryl?

21 MS. METCALF: You got me.

22 MS. GEE: Well, because I would assume that since the

23 language of "mandatory transfer" and military is eligible
24 under today's law, and it is still eligible under next
25 year's law, that you would continue with your current

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1 interpretation. So I don't understand why this is a
2 question.

3 MS. MEYERS: We do have case law that says that the --
4 that does include that final separation -- excuse me. I
5 just remembered that -- in the definition of what is a move
6 to accept a new job. So yeah, because of an old -- well,
7 not old, but a case we have had that was a published
8 precedential decision says, yes, that's included. And we
9 don't think it is now because it's more narrowly construed
10 and limited it to a mandatory military transfer. So we were

11 paying now.

12 MS. GEE: I would say that it was not the intent to
13 change that status. Had it been the intent that you would
14 have seen some language in there accordingly. So I would
15 suggest that the department should keep up with their
16 current practice.

17 MR. SEXTON: I don't know if this is a dumb question or
18 not. That's why I will ask it.

19 When is a military transfer mandatory, and why aren't
20 all military transfers mandatory?

21 MS. MEYERS: I think all moves by the military would be
22 considered mandatory, except for the very last one simply
23 because they are simply released from service. They are not
24 transferred anywhere. They tell me if they want to return
25 to their home of record they will transport them, but it's

1 certainly not mandatory. They are free to go back anywhere
2 they want.

3 MR. SEXTON: Everything else is mandatory.

4 MS. MEYERS: You usually don't get a choice of where
5 you are going in the military.

6 MR. SEXTON: That's kind of what I figured.

7 MS. MEYERS: Gina.

8 MS. BACIGALUPPO: I think I agree with Ms. Gee that
9 whatever has been done in the past is acceptable in the
10 mandatory. I find it hard to believe the legislation would
11 be penalizing our military for returning to their home.

12 And my question with that was also in the past, someone
13 returning to their domicile was allowed benefits. How does
14 that work now? And if it is still in there, wouldn't that

15 cover a military individual's return home?

16 MS. MEYERS: That's where we are not certain because it
17 was based on the previous wording of the statute. And some
18 of these we have to go back in and look. Certainly case law
19 isn't wiped out by this section, but we have to see what
20 actual language that case was decided on, what specific
21 language in the law. And if that language is still there,
22 then we could say, Well, this still applies.

23 But we are having to do a lot of research on various
24 aspects of this. And at this point it's just helpful to
25 find out what you thought was intended or what you think

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1 should be done in this particular case.

2 MS. CRONE: Juanita, can you tell us the name of the
3 case? Is it a commissioner's decision?

4 MS. MEYERS: I believe it's a commissioner's decision,
5 and I don't have it with me. I can get it.

6 MS. CRONE: Okay.

7 MS. MEYERS: I believe it's a commissioner's decision,
8 though.

9 Okay. I'm going to move on to the next sections of
10 this statute, which are the various sections that address
11 what is a substantial deterioration of the working
12 conditions. And, again, those are specifically outlined as
13 to what meets that definition. And I will go through those
14 quickly, and then we will open it up to questions about
15 that.

16 First off, the individual's usual compensation was
17 reduced by 25 percent or more. We have a number of
18 questions about that. What's included in usual

19 compensation? There are people who are compensated in a
20 number of ways other than simple money. People are given
21 company cars to drive. People are given housing. People
22 are given food allowances, medical benefits, stocks,
23 bonuses, retirement, overtime pay, shift differentials.

24 There's a variety of different factors that meet the
25 statutory definition of remuneration, which I think I have

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1 included. It's on page three of the packet that says
2 "Section 4" on the top, the top two pages of the existing
3 rules, the current rules that have to be amended. The third
4 page is actually the current statutory definition, which was
5 not amended, of remuneration. And it talks about all

6 compensation for personal services including commissions,
7 bonuses, and a cash value of all compensation paid in
8 mediums other than cash.

9 So if somebody has been given a housing allowance or a
10 company car to drive, the difficulty is going to be -- say
11 they lose their company car. How do we define whether that
12 is a 25 percent reduction in their pay or not? So it's not
13 simply --

14 MR. SEXTON: One of the wheels.

15 MS. MEYERS: So it's not simply a matter of saying,
16 "Okay, your wage was cut from \$20 an hour to \$15 an hour."
17 It's more complex than that. We have to look at all the
18 remuneration they are given, as it looks to us, and say by
19 what percentages was it reduced after we factor in all the
20 benefits that they have obtained.

21 It's not clear what we include -- because it's not
22 defined in the definition of remuneration, except

23 compensation paid by means other than cash.

24 How about medical? We know there's a lot of people who
25 have either lost their medical benefits or their share of

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1 the cost has increased substantially. Is that medical
2 coverage included in the remuneration definition or is -- at
3 what point is that 25 percent of their overall compensation
4 package? So it's not going to be a simple calculation as it
5 looks on its face.

6 The other question is, what happens with individuals
7 who are hired under an agreement that after, say, a
8 six-month training period -- they are hired at minimum wage
9 and their agreement is that after their six-month training

10 they are going to get a boost up to \$12 an hour. And when
11 they finish the employer says, "Yes, we are going to keep
12 you on, but I can't afford to pay you your increase." Is
13 that a pay cut? Or because it was an individual hiring
14 agreement and they have agreed to pay "X" amount and then
15 the employer doesn't follow through, is that a decrease in
16 usual compensation or not?

17 How long do they have to earn wages before it qualifies
18 as usual? If somebody got a raise and it only lasted a
19 month, and the employer says, "I'm cutting you back." Is
20 that their usual compensation if they worked for a year at
21 the lower rate? At what point does it become their usual
22 compensation? That's not defined. Over what period of time
23 can the decrease occur?

24 Could an employer, and I'm not saying they will, but
25 could an employer attempt to circumvent this statute by

1 giving them a 10 percent decrease and then another 10
2 percent and then another 10 percent? Each of those in and
3 of themselves was another 10 percent decrease in their pay.
4 But overall over a period of time, say, six months, it's a
5 30 percent cut. Do we look over a period of time or each
6 individual pay cut that they happen to get? So those are
7 the types of questions that we have on that section.

8 We have similar questions -- and I'm going to go
9 through the deterioration of work section and then open it
10 up for questions.

11 The next section talks about a 25 percent reduction in
12 their usual hours of work. Again, when we are talking their
13 usual hours are we talking about their hours per day, per

14 week, per month, per year? When we determine whether
15 something's usual, is that based on their individual hiring
16 agreement or what the standard is in the labor market for
17 that application? So is it what the individual has usually
18 worked?

19 Or say the employer had a lot of work for that person
20 because they had a vacant position and the person normally
21 worked overtime and they cut them back, eliminated all their
22 overtime, and the person is now working a standard workweek,
23 but they still experienced for themselves a 25 percent cut
24 in hours. So do we look at the labor industry standards, or
25 do we look at that individual's experience?

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1 How do we look at this when we talk about seasonal

2 work? Certainly there are many jobs which experience
3 seasonal downturns in the amount of work. People may,
4 during the off-season, move to less than full-time work.
5 During that off-season, does that person then have good
6 cause every winter to quit that particular job? Or because
7 it's a typical seasonal business are they expected that
8 that's just part of their particular job and they are still
9 employer attached during that period of time?

10 We had questions about other shifts. The hours aren't
11 being cut, but the employer is saying, "I'm cutting your
12 hours by 50 percent, unless you want to move to graveyard,
13 and then I could put you on full time." Is the person then
14 obligated to take that, or could he quit because of their
15 reduction of hours? And how long do the hours need to be
16 reduced?

17 If the employer says, "To save money, I'm cutting

18 everybody's hours by 50 percent for a week or up to two
19 weeks, and then you will be back on full time. But I just
20 need to do this as a cost-cutting measure." How long do the
21 hours have to be reduced before it's considered good cause?
22 If it's just temporary, a one-time reduction in hours, does
23 that still meet the letter of the law, or is it reasonable?
24 We look at -- we still have a standard that we would look at
25 that's called the prudent person test. At what point would

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1 a reasonably prudent person quit work?

2 The next section is on distance or difficulty of
3 travel. Currently an individual can qualify for
4 unemployment benefits if they -- even if they quit a job
5 that they have taken. Knowing it is outside the normal

6 commute distance they can still quit that job with good
7 cause, even if they knew the distance before.

8 And this happens a lot where people, for whatever
9 reason, can't get a job in their local labor market area and
10 then they take one further away. They decide they can't do
11 it anymore and quit the job. They would still be entitled
12 to unemployment benefits.

13 Under this new section they would not. Benefits would
14 only be paid to an individual if the work site changed and
15 increased the distance or the difficulty of travel to that
16 work site: so if the company moved further away from the
17 individual's residence and the commute was now outside their
18 normal commute distance, or if they made some other change
19 that substantially increased the difficulty of travel.

20 So say the person had worked in Seattle on graveyard
21 and the traffic was a lot less and the employer moved them

22 to days and now their commute each way was two hours because
23 of the traffic, or whatever. I would see that as possibly
24 good cause if that is not in the labor market for that
25 occupation.

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1 Certainly labor markets vary depending on an
2 individual's occupation. Somebody who works as, you know,
3 in the aircraft industry, usually their labor market can
4 include Everett and Seattle even though they are further
5 apart. Somebody who works in the restaurant business as a
6 waiter or waitress in Seattle, we don't expect them to look
7 for work in Everett. There's an abundance of jobs more
8 locally for somebody who has a particular skill or
9 something. It's only jobs found in a couple areas that they

10 would be expected to be available in those areas. So it's
11 an individual, specific determination.

12 MR. DAVE JOHNSON: Could you just go back to what
13 current policy is now?

14 MS. MEYERS: Current policy is that an individual is
15 only required to be available for jobs in their labor market
16 area. So even if they voluntarily take a job that's outside
17 their labor market area, they can quit that job now with
18 good cause if that commute is not customarily traveled by
19 others in their occupation.

20 Say I was in Olympia and I take a job in Seattle.
21 Well, I know where it is. I know it's a couple hours of
22 morning traffic up there, but I am desperate for work and so
23 I just take that job. And I decide after a couple months
24 that the commute's too hard. I'm spending more in gas than
25 I'm earning, or whatever. Or it's just too hard on me. I

1 can quit that job because it's not normal for most people to
2 have to commute from Olympia to Seattle. So if it's outside
3 the labor market area, I could get benefits. Under the new
4 law you cannot. The work site has to change.

5 So you take the job. If I took the job and I know it's
6 in Seattle and I just decide I can't keep the commute up
7 anymore, then I quit for personal reasons, not a quit for
8 deterioration of the working conditions, and so I would not
9 be receiving benefits.

10 If the employer moved the company and says, "I'm moving
11 the company from Seattle to Everett," and I quit then, then
12 I would have good cause because the employer did something,
13 and the employer substantially increased my commute

14 distance.

15 The next piece is on safety violations. An individual
16 has good cause to leave work if they are in an unsafe work
17 site. And certainly under current law they would be granted
18 benefits if their work site is unsafe. The new requirement,
19 however, says that the individual's work site safety has to
20 have deteriorated and the individual has to report that
21 deterioration to the employer and the employer fails to
22 correct it within a reasonable period of time.

23 So the question we had was, what if somebody discovered
24 safety violations? They didn't know about it at the time of
25 hire, but they start the job and they realize there's all

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1 these safety conditions. It's certainly not a deterioration
2 of the work site because it was bad to start with, but the
3 individual had no way of knowing that at the time of hire.
4 So does that fall within this section?

5 Right now existing cause law says that if something is
6 going on in the work site and you continue to work for a
7 period of time, then that's considered your normal working
8 conditions, and you normally wouldn't get benefits. If you
9 go on working for a substantial period of time you would --
10 then we see that's probably not the reason you quit.

11 On here the question is, how long could an individual
12 continue to work with these safety hazards before they say,
13 "You know, I quit." And the person said, "Well, you kind of
14 accepted that and it was okay." So it's not really a
15 deterioration. You knew about it. You worked that way for
16 a year. You can't just up and quit now.

17 And, again, what's a reasonable period of time for the

18 employer to make the correction?

19 We have checked with -- the testimony we heard last
20 time was to look at OSHA requirements. OSHA doesn't give
21 any specific date requirements. What they do is when they
22 cite an employer they say, "You have "X" amount of time to
23 correct this safety violation." But they don't have rules
24 like these types of violations have to be corrected within
25 30 days and these within two weeks and these immediately.

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1 They don't have those kinds of rules. And it may be case
2 specific.

3 But we just wanted to open it up for input as to what
4 is a reasonable period of time for an employer to make the

5 correction.

6 The next one is illegal activities. The individual
7 leaves work because of illegal activities in their work
8 site. They report those activities to the employer, and the
9 employer fails to end those activities within a reasonable
10 period of time. Of course, we still have the questions
11 regarding what's the reasonable period of time, and so on.

12 The main question we have on here is, illegal
13 activities, does that encompass simply criminal acts, or
14 does it encompass civil violations of the law, for example,
15 discrimination, sexual harassment, hostile working
16 environment type of questions, failure to pay minimum wage,
17 failure to pay them on time? Those are complying with Labor
18 & Industries rules about paychecks, and so on, safety, et
19 cetera. What is included in illegal activities?

20 Quite frankly, I think there's going to be a very few
21 number of cases where the employer says, "Yes, there's

22 illegal activities going on at my work site," and "Yes, they
23 told me and I refused to change them." I didn't correct
24 them. This one is almost always going to be based on
25 information from the claimant.

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1 So what are we going to be looking for? Because the
2 employer, I would think, is not going to respond or is going
3 to dispute in all cases, because why would they say, "Yes,
4 this is illegal. And, yes, it is happening. And, no, I'm
5 not doing anything about it."

6 MR. TUVEY: But on the other hand, you have got to have
7 more than an allegation.

8 MS. MEYERS: What are we going to be looking for,

9 simply an allegation? Do they have to have a police report?
10 Do they have to have some kind of witnesses? What do they
11 need to make this decision?

12 And the final one is the individual's usual work was
13 changed to work that violates the individual's religious
14 conviction or sincere moral beliefs. Currently under law
15 the individual had good cause to quit if the work violates
16 their morals. And that could be because the work site
17 changed or because the individual's opinions changed. For
18 example, if somebody converts to a different religious faith
19 or something, they still have good cause.

20 Under the new law they have written here, the employer
21 has to change the work to work that violates their religious
22 convictions or sincere moral beliefs. What was the example
23 given at the last meeting? If they work for a company that
24 builds planes. And then they move them up to a different
25 plant and they say, "You are going to make nuclear powered

1 weapons," or something that violates their religious or
2 moral beliefs, then they could have good cause. But the
3 employer has to take the action.

4 This one discussion comes up a whole lot. For example,
5 the most common one we have had before is a person who
6 worked tending bar and joined Alcoholics Anonymous, and they
7 preferred no longer to work around or be around alcohol.
8 They would probably allow them benefits because use of
9 alcohol violates their moral beliefs. It doesn't look like
10 it would qualify now because their work didn't change. They
11 changed their beliefs or criteria.

12 Okay. That was a lot of information, but I'm

13 interested now in hearing comments, input.

14 MS. BACIGALUP0: I'm going to work backwards. On the
15 last one where you mentioned the bartender, wouldn't that
16 person be eligible to leave their job for good cause under
17 illness or disability? And so you would adjudicate it under
18 illness or disability, was there other work for them to do,
19 and then are they available?

20 MS. MEYERS: They might be eligible under illness or
21 disability.

22 MS. BACIGALUP0: And then on the illegal activities in
23 the work site, the statute doesn't specify employer's
24 illegal activity. It says "illegal activity." I notice the
25 only thing we're discussing is the employer's activity.

1 So what if someone is on the job site and someone is
2 dealing drugs or some other violation of the law? How does
3 that fit into this statute?

4 MS. MEYERS: What it provides is that the individual
5 has to report that illegal activity to their employer, and
6 the employer fails to take action within a reasonable period
7 of time.

8 So they report it to the employer. And, again, we do
9 not know what a reasonable period of time is. Let's say
10 it's a couple of weeks in this situation. The employer
11 says, "I told them to stop," but they haven't stopped and
12 the employer takes no further action. That's where it comes
13 in is the employer doesn't do anything to stop it.

14 MS. BACIGALUPO: But we are recognizing that the
15 illegal activity isn't necessarily the employer?

16 MS. MEYERS: No. The employer doesn't have to be --

17 it's at the work site, I agree, but the employer is the one
18 who has to have failed to end that activity.

19 MS. BACIGALUPO: What about sites like those of us who
20 are in construction? We are at a job site with five, six,
21 seven trades. We have our guys and we can control our guys.
22 So what is our responsibility if an employer comes to us and
23 says one of the other trades is doing illegal activities on
24 the job and they have a different employer?

25 MS. MEYERS: And then we would expect that you would

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1 need to talk to the other employer to do what you could as
2 far as --

3 MS. BACIGALUPO: But we wouldn't have control over --

4 MS. MEYERS: You're right. You can only control what

5 you can control. I mean, you can't control other employers.

6 MS. BACIGALUP0: I agree.

7 MS. MEYERS: I would think that if there was illegal
8 drug activities that was going on there would be some other
9 steps that could be taken to stop it.

10 MS. BACIGALUP0: And then on the reporting of it,
11 wouldn't it make sense that if it's illegal activity and if
12 it's at a level to quit your job that it would make sense to
13 report it to whatever agency, because that would give the
14 backup to the claimant?

15 MS. MEYERS: And that's the question that we are asking
16 here. Are we looking that they report it somewhere, or does
17 the standard need to be that high? That's the question we
18 are asking.

19 MS. BACIGALUP0: Thank you.

20 MR. SEXTON: Well, gosh, there's a whole lot to cover

21 here in each one of these. I have got a whole lot of
22 thoughts on each one of these. But just to jump back in the
23 illegal activity, I think we really need to check the
24 criminal statutes here.

25 I think going back to the reasonable person standard,

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1 you know, I don't think if there's criminal activity going
2 on that the intent here is for the employee to go report to
3 the employer, "Hey, employer, do you know that you are
4 killing people in the back room?"

5 If we are talking about criminal activity here,
6 reasonable person standard, you know, I think it's got to
7 include a third person, a third party. You called the cops
8 and reported it that way. I don't think you are going to go

9 to your employer and report, you know, what the criminal
10 activity was.

11 And I think "illegal activities" is, you know, just as
12 it says, just as it reads. I think illegal activities
13 includes the breaking or the not following of all laws and
14 all rules. I think that's clearly the intent here. And I
15 think that's how it reads. So I think that's very broad.

16 Gosh, I have got lots of thoughts on all of these.
17 It's a little burdensome to do all of these together, I
18 think. But safety and all of these things are all so
19 important.

20 I think the first one is the individual's usual
21 compensation. I think that's clear. I think it means just
22 like it sounds. Reasonable person standard, I think it
23 means everything you get from that employment. I think it
24 means everything in remuneration and more. I think it means

25 everything you receive from that employment.

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1 And the individual's usual hours. I think those are
2 the usual hours that you accepted that work for. So if I
3 accepted that work for 70 hours a week -- it's typically a
4 20-hour job, or it's typically a 40-hour job, but I accepted
5 that job at 70 hours a week -- maybe I'm taking less pay.
6 Maybe I'm doing different work. Maybe I'm doing something I
7 wouldn't normally do. I'm taking this job because of those
8 hours. And if those hours are cut and it's 25 percent or
9 more, then I think those are the hours that we are talking
10 about.

11 And I think the labor agreements, the conditions would
12 kind of fit into both of those. I think that if I accepted

13 a job that my employer told me in six months I would get a
14 bonus and that doesn't happen, if whatever the conditions
15 that I accepted that job for does not materialize, does not
16 happen and, you know -- according to the words on the paper
17 it's got to be 25 percent or more -- but if that doesn't
18 happen, then that's a reduction of 25 percent or more just
19 like it says on the page.

20 That's all I've got for you, but I will think of more.

21 MS. MEYERS: All right.

22 MR. PEARSON: I have a question on the safety -- work
23 site safety. You know, where they fail to correct the
24 hazard within a reasonable period of time. Especially in
25 construction, reasonable period of time -- it only takes you

1 a heartbeat to die. You ask an electrician to go into a hot
2 box or ask a construction worker to go up on a roof and you
3 don't have the safety gear.

4 We encourage our apprentices or journeymen to not do
5 those illegal acts. It's against the law. They are
6 violating the law by telling you to go up on the roof
7 without being tied on or not having the safety equipment.
8 If a person quits his job because of safety -- they can be
9 working down on the ground building walls one day and it's
10 safe to be working on that site. That job site doesn't
11 deteriorate until they get up on the second floor.

12 So I don't understand where -- I believe that if they
13 are violating the state law under L & I or other safety
14 rules that the state has put out or under federal that they
15 should not be penalized for quitting their job and making
16 their employer do what they are supposed to do.

17 MS. MEYERS: And we are not saying that reasonable
18 period of time could not be immediate in some situations.
19 If you can't literally do that job without a piece of safety
20 equipment, and the employer says, "I don't have it." You
21 tell your employer, I need that piece of whatever equipment.
22 And the employer says, "I don't have it. Do it anyway."
23 I would think that that's -- again, I'm just
24 speculating here because we haven't got any determinations
25 on this, but I would think that that's probably good cause

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1 to refuse to do that particular task. Because "reasonable
2 period of time," again, depending on the situation, could be
3 longer or it could be immediate depending on the

4 circumstances.

5 MS. LOGUE: I'm not going to go through all of my
6 comments. I'm going to submit some things in writing,
7 otherwise we could be here for three days.

8 But I do have a question particularly in terms of the
9 safety violation and illegal activities. Because the intent
10 was in these discussions to try to get -- these are
11 currently claims allowed under this now. We did not want to
12 necessarily upset that because it's a realization -- and
13 especially if it's an employer, they don't get any business
14 lawyer costs at that point. So my question is, I guess if
15 there's a reasonable period of time is -- I guess, what do
16 you do now?

17 MS. MEYERS: Currently there's no requirement that the
18 claimant notify the employer.

19 MS. LOGUE: Okay.

20 MS. MEYERS: And a reasonable period of time -- I mean,

21 a person can refuse to work if the employer is -- for
22 example, if they are not paying minimum wage or they are not
23 meeting the requirements, the claimant has now just good
24 cause to quit.

25 MS. LOGUE: So the department doesn't allow any time

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1 period. They just automatically allow --

2 MS. MEYERS: No. They just --

3 MS. LOGUE: So you don't look at it in an adjudication
4 situation and say, okay. When you notified your employer
5 you didn't notify your employer of the safety violation that
6 was occurring. You quit that day. It was an immediate
7 thing. There's nothing discussed under that? I mean --

8 MS. MEYERS: There could be. Again, what we look at is
9 if -- there's a prudent person test --

10 MS. LOGUE: Right.

11 MS. MEYERS: If there's an unsafe working condition
12 or -- these are all fact specific as to whether we would say
13 you have to notify your employer. Certainly in here we
14 wouldn't expect that they notify the employer if the
15 employer is the one committing the violations. Because
16 clearly the feeling now would be that the employer knows
17 they are committing violations. If it's something that the
18 employer doesn't know about at all -- say your coworker is
19 doing something. Then we might say, "Did you talk to your
20 employer first before you left?"

21 So it's fact specific. Here it makes a specific
22 requirement that they notify their employer and give their
23 employer a reasonable period of time, which could vary based
24 on the situation, to correct it.

25 MS. LOGUE: I guess from my perspective I'd like to

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1 take a look at some of the situations that have occurred.

2 So let's look at what we can use, what's already been

3 happening to help determine this.

4 The other question is in the reduction of hours --

5 actually two more questions. The usual hours. How do you

6 do your determinations now? Do you look at annual? You

7 look at reduction in hours now so --

8 MS. MEYERS: Well, yes, we do, but there's not a 25

9 percent figure attached to it.

10 MS. LOGUE: It's 20 percent.

11 MS. MEYERS: There's nothing on hours.

12 MS. METCALF: The benefit policy guide gives
13 guidelines.

14 MS. MEYERS: On hours?

15 AUDIENCE MEMBER: It doesn't say anything --

16 MS. MEYERS: We need to talk one at a time.

17 MS. METCALF: Again, it's all case specific when we do
18 our adjudication. Usually -- no, not usually. Take that
19 word off. In many cases you will see about between 10 and
20 12 percent, but, again, it's case by case.

21 MS. LOGUE: Okay. Then from my perspective on that in
22 the reduction of hours and the wage situation, I would like
23 to look at how they are currently applied now, but not
24 necessarily using the number percentage, whatever, but under
25 what situation are you including -- getting your car taken

1 away when your company is about to go under is a lot better
2 than having your actual wages you're taking home cut. So
3 there's very different economic scenarios that could apply
4 there.

5 I would like to look at just how are those applied now.
6 I think that's important because there was a lot of this
7 where there was an intent to try and just strengthen or
8 clarify but maintain a lot of similarities to what is being
9 done now.

10 And I think the last one -- the same thing on distance
11 or difficulty of travel. "Material increase" isn't defined.
12 But, again, when you are looking at distance or difficulty
13 of travel, what are you looking at? Is it Tumwater to
14 Olympia? Is it Olympia to Seattle? which could be a
15 reasonable commute in some situations. What do you look at?

16 MS. MEYERS: It depends. We look at that occupation
17 and then the labor market for that occupation. Commonly,
18 someone who lives in Olympia would be expected to be
19 available for work throughout Thurston County, Shelton, you
20 know, possibly Tacoma depending on their job, but not
21 always. But someone who is in another occupation, maybe
22 Seattle. If you live in Olympia and, again, you are an
23 aircraft mechanic, you are going north to look for work.
24 That's your labor market.

25 MS. LOGUE: But could you give just some samples or

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1 examples or something of what -- how you do it now --

2 MS. MEYERS: Okay.

3 MS. LOGUE: -- to help us get a better understanding of

4 where we can clarify the definition?

5 MS. MEYERS: Okay.

6 MS. GEE: I just want to add to this that by putting
7 the first section into the bill that it restricted the
8 interpretation, took away the word "liberally" construed.

9 We all understood as we were discussing the bill that
10 we were taking away some of the flexibility of the
11 department. The department has provided benefits in the
12 past for reduction of hours, reduction of pay, and for new
13 requirements for distance. Our intent was to preserve
14 those. And because it wasn't in statute, we wanted to
15 preserve it. And so that's why we put it in here.

16 But we wanted to raise the bar from what typically was
17 interpreted as 10 percent to up to 25 percent. It was not
18 the intent to change, turn this thing upside down. It was
19 the intent to preserve those benefits for people but to

20 raise the bar from 10 to 25 percent.

21 MS. CRONE: I'm not going to make all my comments at
22 once, just one at a time.

23 The "usual compensation," we have a clear statutory
24 definition, RCW 50.04.320, wages and remuneration. So in
25 terms of defining "usual compensation," it seems to me that

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1 we don't have to look any further than to see what
2 remuneration is. And it would appear that the things that
3 you have listed would indeed be included in calculating the
4 25 percent.

5 MR. TUVESY: I'm going to make just a series of random
6 comments about many of these issues.

7 MS. MEYERS: Okay.

8 MR. TUVEY: I have to disagree a little bit with what
9 Pam said in that a couple of these things you have listed,
10 particularly looking at bonuses and overtime, are not
11 defined. They are potential things that may or may not
12 occur during the course of a period of employment.

13 In the case of bonuses, it is discretionary -- at the
14 employer's decision, and overtime may or may not be
15 necessary depending on the work load. So I don't think that
16 you should include non -- I don't want to say guaranteed --
17 but nonknown quantities as -- you know, a lack thereof being
18 a reduction in compensation.

19 In addition, in that same area I would encourage you to
20 indeed consider all compensation as compensation. And so
21 that if in the most common situation only the wages are
22 decreased -- for example, if someone was decreased 26
23 percent in their wages, that would be less than a 25 percent

24 compensation decrease because of all of the other things
25 that they are getting, such as, medical benefits, company

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1 cars, retirement benefits, and all those things that were
2 not decreased. The 26 percent decrease in pay per hour is
3 not a 25 percent decrease in compensation. So what's good
4 for the goose is good for the gander.

5 If you are going to include everything in terms of
6 compensation, which I agree you should do, then you have to
7 only take a 25 percent decrease in the total compensation
8 package. And I think that's a critical element of this.

9 Another point, in the distance and difficulty of travel
10 and those kinds of things, some of them I understand are not
11 readily quantifiable, but I think you should look to -- in

12 those cases where they are, you should -- there should be an
13 attempt made to make things quantifiable.

14 I think you should look at the 25 percent level that
15 was chosen as the number to put in the bill for wages and
16 hours, and so on. And, likewise, if you are looking at an
17 increase in difficulty of travel and distance, we are
18 looking at somewhere in the neighborhood of 25 percent.
19 And, again, that's in terms of the neighborhood of all of
20 those issues.

21 The safety violations, I think you know, which has been
22 mentioned, are very definitely case specific. And in some
23 cases, whatever the reasonable person test would be in terms
24 of the length of time -- some of them are going to be
25 immediate, and some of them whether they were less serious

1 or less consequential, are going to be over a longer period
2 of time.

3 And both with the safety violations and the illegal
4 activities, I again have to emphasize that these are not
5 just allegations because somebody comes in and says, "My
6 employer was doing something that wasn't safe," or, "Oh,
7 there's some illegal activity." There's got to be some kind
8 of proof that there was illegal activity. Even a charge
9 complaining to the police department is not evidence that,
10 in fact, that was going on. It's only an allegation even at
11 that point.

12 So there needs to be some kind of admission or proof to
13 a, quote, "competent authority," perhaps in the language of
14 another section of the law that, in fact, there was a
15 problem here.

16 If you are going to limit, you know, a benefit denial
17 to a situation where there's admission to a competent
18 authority or conviction, maybe it ought to go the other
19 direction as far as allegations against an employer. I will
20 stop there and submit some comments in writing.

21 MS. MEYERS: Before we go on, I know there are a number
22 of you that want to make comments on this section, and we
23 want to hear all of your comments. Would you like to take a
24 quick break, though, before we reconvene? 10 minutes or 15?
25 10 is enough, okay.

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1 (Recess was taken.)

2 MS. MEYERS: I would like to finish up your comments on

3 voluntary quit. We will have to pick up with some of the
4 benefits stuff after lunch, simply because there's lots of
5 it. But we will still cover tax in the afternoon.

6 MR. JEFF JOHNSON: I'm just going to make a couple
7 comments. There's much that I will say in written form
8 representing the counsel.

9 I think in terms of usual compensation, the statute
10 definition of remuneration pretty well covers it. It would
11 appear to cover all bonuses, all benefits that we typically
12 understand, health and welfare, retirement, and so forth.

13 In terms of the 25 percent reduction in hours,
14 everything is from politics, everything else is local. So
15 it's based on -- I would think that it's based on the
16 individual, rather than industry norms. And at least in
17 unemployment insurance you can go back and look at an
18 individual's base year. In workers' compensation you look
19 at compensation at the time of injury.

20 And I have lots of comments, but I'm going to make one
21 brief editorial comment. I guess the real tragedy is it's
22 real difficult, in my opinion, to take a bad law and create
23 rules to make it work any better than it's written, where
24 there's ambiguity of language.

25 In this section there's no room for discretion. There

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1 is an attempt to quantify things that are actually
2 qualitative in nature. So there's so many circumstances
3 around deteriorating working conditions that cannot be
4 accounted for because of these bright-line tests that, in my
5 opinion, make no sense and take away from the spirit of
6 creating a better functioning economy by going on a

7 case-by-case basis. So I'm going to stop there. Thank you.

8 MS. CRONE: I would also like to make a comment, one of
9 many that I could make, but I will just make one at this
10 point. And it too is about the almost absurdity of some of
11 the provisions.

12 In looking at the leaving for illegal activity, the
13 example we used during the session was, if your employer has
14 a methamphetamine lab in the basement, are you required to
15 tell your employer that he has a methamphetamine lab in the
16 basement and provide him an opportunity to remove it?

17 As I see under the statute, there's no room or
18 opportunity to argue that it would be futile, that it would
19 be unsafe. There are any number of reasons why you might
20 not be able to give your employer an opportunity to remove
21 the illegal activity or condition. Am I reading that
22 correctly?

23 MS. MEYERS: I think so, but we haven't hammered out

24 all of the details on this. But it appears that you are
25 correct that it requires an employer notification for good

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1 cause.

2 MS. MARANVILLE: I would like to go back to the
3 question of what kinds of proof or evidence would be
4 required by the claimant in terms of illegal activities and
5 safety violations.

6 I would just note that there's nothing in the statute
7 that would suggest that those questions should be handled
8 any differently than any other questions under the statute.
9 In other words, there's no reason to require special kinds
10 of proof in those situations.

11 You may wish in the benefit policy guide to give
12 examples of ways to evaluate credibility, et cetera. But in
13 the rules themselves that would govern -- when the case has
14 gone to a hearing, I think that you would simply decide
15 those questions as you would any other case, based on what's
16 decided at the hearing.

17 MR. GONZALES: With regard to safety violations,
18 illegal activities, and religious or moral convictions, I
19 would think that it would be made clear that that would be
20 applicable where it is directly connected to the employee's
21 position.

22 In other words, for example, an office worker that
23 becomes aware that in the production section of the company
24 there was a safety violation. Well, it doesn't apply to
25 that individual's position. I would think that that would

1 be clear in the rules.

2 And with regard to illegal activities, again, if
3 there's an office worker and he knows that somewhere in
4 production there was some drug dealing, for example, going
5 on and that has no direct connection to that individual's
6 position, that it would be made clear that the connection --

7 Again, with religious and moral convictions, he works
8 for a large company, and he doesn't know what the company is
9 involved in. And there's a plant where they do military
10 work. And this person is a passivist or whatever he
11 might happen to be, based on his religious convictions.
12 Again, I hope that it would be made clear that it be
13 directly connected to that individual's position.

14 MR. DAVE JOHNSON: Dave Johnson with the Washington

15 State Building Trades. We were talking about intent
16 earlier, and some comments were made that this legislation
17 was intended to strengthen, clarify, and raise the bar of
18 unemployment compensation, which in this case in reading
19 through what we have got and trying to define it, is really
20 synonymous with cutting benefits and just making it more
21 restrictive to be able to draw unemployment.

22 And, unfortunately, I would have to echo Jeff's
23 comments in terms of it makes it almost impossible for us to
24 help the department in defining how to apply these changes.

25 However, I would suggest in terms of the individual's

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1 work site changing or the mileage provisions that the
2 department would apply current practice in addition to

3 what's actually included in the legislation.

4 And in terms of the safety hazards on the job, there
5 again, unfortunately, these should be immediate. Both the
6 safety hazards on the job, they should be corrected
7 immediately, and the illegal activities should be corrected
8 immediately.

9 It's unfortunate that I don't see any way around this.
10 It's either going to appeal or review by the department,
11 which is going to incur costs on the department. And we
12 would be extremely interested as we move through, and we are
13 on page 7 now, as the numbers come in on what's going to
14 need to happen in order to make this legislation work, what
15 the actual price tag is and what's going to be involved
16 there.

17 MS. MEYERS: The gentleman in the very back had his
18 hand up, then we will move forward again.

19 MR. RICHARDSON: I would just like to have a
20 clarification on this travel time and distance. I guess, if
21 I'm forced to take a job in Montana because there's no work
22 in Washington -- my child gets sick, I have to come home,
23 are you telling me I don't have unemployment benefits?

24 MS. MEYERS: I am telling you that, yes.

25 MR. RICHARDSON: That is very unfair, I believe. But

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1 that's my opinion on that, and I don't see how that can fly.

2 MS. MEYERS: Pam and then Dan.

3 MS. CRONE: As I understand it, the governor has
4 required that a study be done on the voluntary quit changes
5 -- or I guess my first question is, what information will be
6 provided to the governor? Will it just include information

7 on the impact of the quits, or will there be information
8 provided to the governor on the impact of other parts of the
9 legislative changes?

10 And then to follow up with that, how will you be
11 tracking the impact? Will that information be available to
12 us, and will we be able to provide some input as to what
13 should be tracked?

14 MS. MEYERS: We are still designing the study. You are
15 correct that the governor mandates that the department study
16 the impact of the changes to the voluntary quit statute on
17 reciprocity, how many people actually qualify for benefits.
18 We will certainly give the UI committee an opportunity to
19 comment on the construction of the study.

20 But what our plan is -- we have got new, what we call,
21 issue codes for all of the new separations. We will track
22 each one separately, you know, if they quit for a 25 percent

23 reduction of pay or 25 percent reduction of hours.

24 And also there is going to be a new list of codes

25 that's been designed to actually indicate whether they would

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1 have been allowed under the old law so we can find the

2 difference. Because it doesn't do enough to say who is

3 denied under this section total if you can't also tell them

4 what the difference is between if the law had not changed.

5 That study is not due until June of 2005. We will have

6 about 18 months of experience -- well, a little less because

7 you have to put the study together. But over a year of

8 experience when we get it into place, but we will be --

9 unless something happens next session, and I have no idea,

10 we will anticipate that we will be implementing these

11 changes in January. And we will go forward from there and
12 see what happens after we look at the results and the
13 political review.

14 MR. SEXTON: Thank you. I thought Tim and Dave had
15 some really good comments on the safety. And I wanted to go
16 back to the illegal activities.

17 It says here, "The individual left work because of
18 illegal activities at the individual's work site. The
19 individual reports such activities to the employer. The
20 employer failed to end such activities within a reasonable
21 period of time."

22 To me, clearly, this is silent on illegal activities
23 caused by the employer. This is silent. It's not talking
24 about illegal activities that the employer is doing. It's
25 talking about illegal activities happening at your work

1 site.

2 So if I'm working somewhere and there's drugs being
3 sold at my work site by a coworker or by individuals not
4 involved at that work site, it's my obligation to report
5 that to my employer. That's what it says here.

6 It does not say anything at all here about illegal
7 activities performed by, caused by my employer. And I think
8 by the reasonable person standard there, clearly, I do not
9 believe that anyone is going to suggest that the
10 legislature's intent was to cover up, protect illegal
11 activities by employers or anyone else.

12 And I don't think anyone is going to say that it was
13 anyone's intent to make employees report illegal activities
14 caused by, performed by employers to employers. I don't

15 think that's what it's saying here. I think it is
16 absolutely and completely silent on employers causing,
17 performing illegal activities at the work site.

18 And I think that the rules should clarify that and
19 address that, that the employees are not reporting illegal
20 activity to the employers when the employers are causing and
21 performing that illegal activity.

22 And I would kind of like some more clarification on the
23 Montana question too. If I'm working in Montana, and if I
24 leave work, quit my job because of a sick child, I'm denied
25 unemployment. But if I tell my employer that the commute

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1 was greater than is customary for a worker's individual job

2 classification in the labor market, then I get unemployment?

3 MS. MEYERS: No. Because what the statute says is the
4 individual work site changed and that led to the increased
5 travel or --

6 MR. SEXTON: So my question is, I'm working in Olympia,
7 and my employer is in construction, we move around. My
8 employer gets a job in Montana, and I'm sent to Montana, and
9 I'm there. And it says, "The individual's work site
10 changed. Such change caused a material increase in distance
11 or difficulty of travel and after the change..."

12 So I have gone to Montana, and now I'm saying, "Hey, I
13 didn't know that Montana was three states away. I didn't
14 know that this is -- you know, I needed the job last week,
15 but now I have got a paycheck and this is really far, and
16 it's a big commute. And you didn't tell me it was a big
17 commute when I took this job." So if I say that --

18 MS. MEYERS: You could qualify for benefits because the

19 employer is the one who moved the work site. You lived,
20 worked in Olympia, and he or she moved you to Montana. And,
21 obviously, Montana is not in anybody's reasonable commute
22 distance for residence in Washington. So if you take that
23 job, you could, under the statute, have good cause for
24 quitting because it's outside your normal work site area.

25 Now, if you live in Olympia but you just took a job in

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1 Montana and decided you hate Montana and you're not staying
2 here, and you want to go back to Olympia and then you quit,
3 then you don't have good cause because you took the job
4 knowing where it was. The employer did not change the work
5 site in any way. Your personal choices changed.

6 And we need to wind this section up to go on to
7 misconduct.

8 MS. LOGUE: I wanted to comment on that too, because I
9 thought that was sort of an arbitrary, no, you won't get
10 benefits when there are so many different scenarios where
11 benefits could apply.

12 First of all, if he had left his job in Washington
13 because of a bona fide job offer in Montana and that fell
14 through, yes, he potentially could get benefits.

15 If it was a Washington-based employer with a job site
16 in Montana and his child was sick and he had no leave of
17 absences where he was told, "No. You're out of a job if you
18 go," yeah, he potentially could get benefits under that
19 situation.

20 And also the commute distance situation, I mean, if the
21 employer moved the work site and said, "You have to go to
22 Montana," yes, there are situations in what he brought up

23 where benefits could apply. However, if it's a
24 Montana-based employer and he takes a job in Montana, then
25 Montana's law would apply, I would assume.

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1 MS. MEYERS: No.

2 MS. LOGUE: No? They wouldn't apply?

3 MS. MEYERS: No.

4 MS. LOGUE: They wouldn't apply if he quits his job in
5 Washington and goes to Montana?

6 MS. MEYERS: No.

7 MS. LOGUE: But then he would have to come back and he
8 would have to show one of these other reasons in Washington
9 in order to qualify for Washington benefits.

10 MS. MEYERS: Correct.

11 MS. LOGUE: So there are scenarios under which, in that
12 situation that he brought, under the new statute he could be
13 allowed benefits.

14 MS. MEYERS: Right. I was narrowly construing it --

15 MS. LOGUE: Okay.

16 MS. MEYERS: -- as if he took a job in Montana and quit
17 it for personal reasons to come back. Does this section
18 allow him benefits? No.

19 MS. LOGUE: Would it have allowed him benefits before
20 under current law?

21 MS. MEYERS: It could, yes --

22 MS. LOGUE: Possibly,

23 MS. MEYERS: Yes, it would. Because it was outside his
24 normal commute distance.

25 MS. LOGUE: Because he took the job being with the same

1 empl oyer.

2 MS. MEYERS: Yes.

3 MS. LOGUE: What if it was a new empl oyer?

4 MS. MEYERS: Same thing. Currently he would get
5 benefi ts. If his job file remained here and he took a job
6 in Montana, a temporary job in Montana, or just took a job
7 in Montana because he couldn't find work here in Washington,
8 he could quit now under current law and get benefi ts because
9 Montana is not in his labor market.

10 MS. BACIGALUP0: On the transfer, once he accepts the
11 transfer and goes, I would assume then he can't quit because
12 of it because he has accepted that job and started it.
13 Whereas, if his employer said, "The next job I have is in

14 Montana. I'm going to transfer you there." That is where
15 he has an opportunity to say, "You are changing my work
16 site. I'm not willing to change it. I don't want the
17 transfer." If you accept it and make the move and work and
18 then say, "Oops," like he said, you know, "It's two states
19 away"?

20 MS. MEYERS: Well, I don't have an answer for you on
21 that. We will have to look at that.

22 MR. SEXTON: Because the language does say, "and after
23 the change."

24 MS. BACIGALUPPO: I think "and after the change" --

25 MS. MEYERS: Hold on. We don't want to start

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1 discussing back and forth. It's too hard to track. I do

2 want to wind this up if we could. I know you probably have
3 a lot of concerns still about voluntary quit. I don't know.
4 We may have to have another meeting, but I need to move on
5 to misconduct. Is that all right with everybody? In the
6 very back of the room.

7 MR. CRUME: Yes. I was thinking about the
8 deterioration of safety and how that's libel to "Well, we
9 have always done it that way."

10 In our industry there's a pretty low level of safety at
11 times, and, for instance, I'm thinking of respiratory
12 safety. And in the past few years it has gotten better, but
13 there are still gaps in knowledge. You can go into a
14 confined space and start welding, and essentially you are
15 freebasing whatever is on the surface. Oftentimes they
16 don't know what is on there, or whatever's on the surface
17 changes in the process of welding. You oxidize it and make

18 i t more reactive.

19 So i f you know that going i n there i t i s going to cause
20 you harm -- breathing that stuff i s l i k e breathing poi son.
21 And your boss says, "Go r i g h t i n there. We have done i t
22 that way for 20 years." And you say, "Wai t a minute. Thi s
23 i s unsafe." And he i n s i s t s, "You do i t or you're fi red."
24 And you say, "You don't have to fire me. I qui t. Bye. I'm
25 out of here." I n that i n s t a n c e, what do you do? You can't

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1 collect unemployment under those i n s t a n c e s?

2 MS. MEYERS: No. I don't think that's necessarily
3 true. I mean, i f the employer i s the one -- i f i t's
4 something that needs to happen i m m e d i a t e l y before you go i n
5 to do that job, that you need to have thi s p a r t i c u l a r piece

6 of safety equipment and the employer refuses to provide
7 it -- again, these are always fact specific, but just within
8 the parameters you gave I would say they qualify for
9 benefits under this section.

10 One last one and then we'll move on.

11 MR. DAVE JOHNSON: I will just add on to that and
12 correct me if I'm -- if this wouldn't be the sequence of
13 events.

14 This individual goes out there, identifies this
15 potential safety hazard and says, "No. I'm not going to
16 work." Let's say the company has done it that way, but it's
17 been wrong for however long he has been doing it. So he
18 files his unemployment claim. The employer denies it or
19 says, "No. We don't agree with this." Automatically the
20 department is drawn into making the determination.

21 So by not having any clear-cut language there, in

22 almost every one of these instances there has to be a

23 review. Am I correct in that?

24 MS. MEYERS: What do you mean by "a review"? An

25 appeal?

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1 MR. DAVE JOHNSON: Yeah, an appeal.

2 MS. MEYERS: That depends. The standard for

3 unemployment claims is not reasonable doubt. It's just the

4 weight of the evidence. And so generally we would just do

5 an interview with the claimant, do an interview with the

6 employer. Who is more credible?

7 If the claimant's response is that they needed this

8 equipment, and the guy says, "Well, technically, yes, but we

9 have done it for 20 years without it." But if it's

10 something that's required, we would probably allow benefits.
11 Because whether the employer has done it in the past or not,
12 if it's a legal requirement and it's a safety issue, I would
13 think that we would allow benefits in that situation.

14 MR. DAVE JOHNSON: My point is in almost every instance
15 that we have touched on today, this review would have to
16 take place.

17 MS. MEYERS: Well, the appeal is always at the
18 discretion of the claimant or the employer. It's not
19 something we would initiate. We would make a decision, send
20 it to you, and then either one of you, the employer or the
21 claimant, can file an appeal in any case.

22 MS. DAVE JOHNSON: Right.

23 MS. MEYERS: Can we move on to misconduct?

24 Section 6 of the statute has a new definition of
25 misconduct. And there is regular misconduct and gross

1 misconduct.

2 Elements of misconduct are four: essentially, willful
3 or wanton disregard of the rights, title, and interests of
4 the employer or a coworker; deliberate violations or
5 disregard of standards and behaviors that the employer has a
6 right to expect of their employee; carelessness or
7 negligence that causes or would likely cause serious bodily
8 harm to the employer or a coworker; or carelessness or
9 negligence of such a degree or recurrence to show an
10 intentional or substantial disregard of the employer's
11 interests.

12 And then Section 2 lists a number of examples that
13 constitute misconduct: inexcusable tardiness, dishonesty,

14 repeated and inexcusable absences, and so on.

15 Section 3 says misconduct does not include things like
16 inefficiency or failure to perform well which results from
17 incapacity or inability of the claimant to perform the work;
18 inadvertence or ordinary negligence in isolated instances;
19 or good faith errors in judgment or discretion.

20 Then there's a new piece added about gross misconduct
21 which says that gross misconduct has two elements: It's a
22 criminal act in connection with their work for which the
23 individual has been convicted in criminal court or has
24 admitted committing, or conduct that's connected with their
25 work that demonstrates a flagrant and wanton disregard of

1 the interests of and for the employer or coworker.

2 The current definition of misconduct is that it's an
3 employee's act or failure to act in willful disregard of the
4 employer's interest where the effect is to harm the
5 employer's business.

6 As you will see, the first note in here, it is the
7 opinion of our attorney that harm is still required under
8 the statute because the previous definition of misconduct
9 didn't include harm, but existing case law all ties into
10 harm to the employer. So it would have required specific
11 language in the statute -- to get rid of anything regarding
12 harm to the employer would have required it to say
13 "regardless of any harm to the employer," or something.
14 Because that's not there, the current case law would still
15 have us looking at harm to the employer in adjudicating
16 whether misconduct had occurred.

17 We do have a number of terms in this statute that we

18 think need to be defined. "Willful" and "wanton" disregard
19 of actions, particularly as that compares -- which is
20 misconduct -- how that compares to the term under gross
21 misconduct, a "flagrant" and "wanton" disregard. What type
22 of acts fall in the parameters of "willful" and "wanton"?
23 What other acts meet the definition of "flagrant" and
24 "wanton" acts? Because the penalty for the second is
25 substantially higher for an act that's flagrant as opposed

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1 to an act that's willful.

2 At the last meeting we were told to check with Montana
3 because Montana's law was what was used as a basis for this
4 statute. In fact, it was almost word-for-word the same.

5 Montana doesn't have a definition for the word "flagrant."
6 They have no case law established on it, and they hardly
7 ever use it. But their claims load was much smaller too.
8 They were no help in providing guidance on how to define
9 this. So it's up to us, I guess, how we are going to
10 interpret it.

11 We were not clear what is meant by the terms "rights,
12 title, and interests" of the employer, because that is what
13 is used under the regular misconduct. And gross misconduct
14 uses "rights, title, or interests" of the employer. One's
15 an "and" and one's an "or." Is that a drafting error, or is
16 that intentional? Is there an intentional difference
17 between the two?

18 "Reasonable rule." Are we assuming that the rule has
19 to have a connection with the work? The employer can't
20 adopt rules and try to govern the person's private life or
21 private behavior?

22 "Inexcusable tardiness or absences." Who defines what
23 is excusable or not? If the person has a physician's note
24 saying they need to be gone, but the employer says, "I have
25 to have you here for work. That's inexcusable." Who's the

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1 deciding party in determining whether an absence is
2 excusable or not? And then we have a number of examples.

3 When we talk about dishonesty related to employment,
4 currently somebody who lies about a material fact on a job
5 application, that's grounds for, disqualification for
6 misconduct.

7 Now it seems to be broader. It just says "dishonesty."
8 What if the job application asks questions that can't

9 legally be asked? which happens a lot. You still see
10 employers who ask, "Are you married? How many children do
11 you have? Or do you have child care arrangements?" which is
12 beyond the parameters of what legally can be asked.

13 If the person lies on something that can't legally be
14 asked, is that grounds for determination that misconduct was
15 committed? Or was the lie irrelevant, perhaps an immaterial
16 lie about their age or something like that?

17 The next one is about absences: "Repeated and
18 inexcusable absences, including absences for which the
19 employee was able to give advance notice and failed to do
20 so."

21 When we talk about "advance notice," how much is
22 required? Do they need to give 24 hours notice? Can they
23 call in that morning? What is advance notice, and is it
24 case-by-case specific? What is going on there?

25 It says here that they need to be given advance notice.

1 To whom? We have seen a lot of cases where they are
2 discharged because the person said, "Well, I told them to
3 call me," me being the employer. And the claimant said,
4 "Well, I called and they weren't available, so I told my
5 coworker," or the secretary or somebody else. Who does the
6 advance notice need to go to?

7 And, again, the next one we talk about -- it says after
8 warnings have been given. How long ago could the warnings
9 have been given? This is an extreme example, but you can't
10 fire somebody today and say, "I told them two years ago not
11 to be late again, and they were late again." That's really
12 a long, long period of time. And is there some proximity

13 that the person should be expected to have with the actual
14 cause of discharge? Do the warnings have to be so remote in
15 nature? Or should we expect that they be reasonably
16 somewhat proximate to the discharge?

17 "Illegal acts." Do they need to be related to the
18 employment to disqualify the person? What are we including
19 in illegal? Are we talking traffic violations? civil
20 violations? Where driving's not their job and has no
21 bearing on their particular job, if somebody is arrested for
22 driving under the influence, can the employer fire them for
23 that? It's not part of their job requirements.

24 "Lawful union activity." I think that's probably
25 fairly easy to define. But, well, we would think. But we

1 have a number of cases where people are fired for trying to
2 form a union, and so on, in the company. And the employer
3 is going to allege that that's not legal. It was outside
4 their requirements. And it's going to be a fact-finding
5 situation there.

6 The section about violations of the law by the claimant
7 while acting within the scope of employment. What is their
8 scope of employment?

9 Now, there are certain cases where we do currently
10 disqualify people for off-duty misconduct, when, for
11 example, they are a police officer and they engage in
12 illegal activities off the work site. Well, there's a
13 standard of behavior that's expected 24 hours for being a
14 police officer.

15 We have disqualified teachers who have committed
16 illegal acts. Because a lot of school districts have their

17 teachers sign what they call "moral s clauses" basically they
18 can be terminated if they were found guilty of any gross
19 misdemeanor or felony.

20 What are we going to consider within the scope of
21 employment? Two women employees got into a physical fight
22 in a parking lot after hours at an employer's place of
23 business. Is that within the scope of employment? What if
24 the parking lot doesn't belong to the employer? It's a
25 private lot. Is that within the scope? I mean, there are a

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1 number of factors to look at what falls within the term
2 "scope of employment."

3 I'm going to move on to admission of criminal acts in
4 Section 4. The current statute says that a felony or gross

5 misdemeanor has to be admitted to a competent authority.
6 This section strikes "competent authority." It just has "or
7 has admitted committing."

8 We have defined in rule who competent authority is.
9 And it's not us. We limited it to police, administrative
10 law judges, legal systems, basically law enforcement or
11 judicial groups. It doesn't include the employer. It
12 doesn't include the department.

13 So is the expectation now that if the claimant tells
14 the department that they committed an illegal act that that
15 is now part of the fact-finding, and we would take that in?

16 Who would we look at? I give some examples in the list
17 there. Who are we talking about? Are we talking about them
18 admitting it to a coworker? to an employer? a neighbor?
19 their ex-wife? Or their ex-husband claims that they told
20 them? Who is the admission to going to be considered? At

21 what point is it just allegations, and at what point do we
22 say, "That's an admission"?

23 And why we limited it before to judicials -- because
24 there's evidence. They told the police. There's a
25 statement. If they told a law judge in court, then there's

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1 a record of that.

2 If we open it up to others, like an employer, unless
3 they sign something, the employer I would envision to say,
4 "They admitted it." And the claimant would say, "I never
5 did any such thing." If we add coworkers, neighbors,
6 ex-spouses, current spouses -- there's a whole variety of
7 things. I can see a lot of questions to see how reliable
8 that admission was.

9 And are we going to look at any type of -- does the
10 statement need to be written up? What kind of proof or
11 evidence are we going to look at?

12 Because generally the moving party is who we look at to
13 establish the evidence. On a quit we look at the claimant
14 and say, "What were your reasons for quitting?" On a
15 discharge we look and say, "What were your reasons for
16 discharging this individual?" And if the employer says,
17 "Well, they admitted to me that they stole this piece of
18 equipment," and the claimant says they didn't, what do we
19 need to back up that the person committed misconduct?

20 I'm going to talk about the penalties, and then we will
21 open it up to misconduct.

22 Section 9 sets the penalties for misconduct. A person
23 who is discharged for misconduct -- currently the penalty is
24 seven weeks and until they earn seven times their weekly

25 benefit amount, the same as voluntary quit.

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1 Under the new statute it is increased to ten weeks.

2 They are disqualified for ten weeks and until they earn ten
3 times their weekly benefit amount.

4 In addition, if they are fired for gross misconduct --
5 and that's the criminal act or flagrant and wanton disregard
6 of the employer's interests -- they additionally get one of
7 two things -- well, they have all of their hourly wage
8 credits based on that employment canceled or 680 hours of
9 wage credits canceled, whichever is greater.

10 And we have a lot of questions about this, because we
11 frequently, very commonly have three and four, five, six
12 base year employers in the base year. The question is, say

13 they only worked 100 hours that we are discharging the
14 employer, so it's 580 hours to take. Which employer do we
15 take them from? Do we take them from all of them and
16 portion them all out proportionately? What about the
17 reimbursable employers? Do we take them out? Do we limit
18 it to the taxable employers? Whose wages get reduced,
19 because it has an impact on benefit charging?

20 Because only the wages used for the claim are charged
21 to the employer. So if we took all 580 from one employer,
22 they would reap the benefit because few of their wages would
23 be used to establish that claim. If we parcel them out,
24 which would seem to be more fair, but it's a lot more
25 complicated from our perspective, particularly when you are

1 talking construction work and agricultural work where it's
2 not uncommon to have 20, 30 base year employers and the
3 pieces go all out. It's not going to be easy.

4 So it's not as straightforward as it may look. Because
5 it's not that common -- you do see cases where it's just two
6 employers, but it's very frequent you see a lot more than
7 that in the base year.

8 So let's talk about misconduct. Input? Questions?

9 MS. LOGUE: Once again, this is where I will probably
10 submit a lot of written comments. Actually, I do think it
11 was a drafting error in the rights, title, "and" interest.
12 That happens.

13 Under the admission of criminal acts and it being
14 admitted to whom, I know I would have no problem with
15 keeping your current rule definition as far as admissions.
16 The only other addition that might be made is if they did

17 somehow in writing admit something to the employer, that
18 there is evidence of that. I mean, if you have hard
19 evidence of an admission, it should be at least considered.

20 As far as the penalties, I think from our perspective
21 that they be parceled out fairly. I think you are talking
22 about a situation where you have to make this as fair as
23 possible for the employers involved, because this is an
24 employee situation.

25 MS. MEYERS: Anybody else?

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1 MR. SEXTON: Yeah, I will go if no one else has
2 anything to say.

3 You know, it kind of seems like the 25 percent standard

4 has been the recurring theme throughout here and the harm to
5 the employee. All the harm to the employee had to be by 25
6 percent or more.

7 I think that's probably the intent here too, is that
8 all the harm to the employer is probably at 25 percent or
9 more also. I think if that was the reasonable rule that
10 seems to be the recurring theme through here, that's
11 probably the intent here also.

12 MS. MEYERS: Anything else?

13 MS. LOGUE: Just once again, getting back to as we go
14 through and do some of these definitions, you know, I'm
15 looking at -- for "willful" and "wanton" there ought to be
16 case law that already helps to define those terms.

17 MS. MEYERS: There is case law on "willful" and
18 "wanton" there is not on "flagrant" and "wanton."

19 MS. LOGUE: So "flagrant" we do need to take a look at.
20 I would be willing to take a look at some cases that might

21 fit under flagrant and come up with a definition.

22 The other thing is when you were talking about the
23 level of harm, if harm to the employer's interest is
24 required under current case law, then we ought to be able to
25 come up with what that means. Once again, I think we can

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1 fall back on what's currently being done and use that as our
2 base.

3 MR. TUEY: Just one suggestion on the admission to
4 whom or the conviction by whom. I would submit that the
5 licensing authorities ought to have the same standing as a
6 court or administrative law judge, and currently that's not
7 the case.

8 MS. MEYERS: Okay.

9 MR. TUVEY: We have situations -- I have worked
10 primarily with the hospitals. And we have situations where
11 a person was convicted of something that results in taking
12 their license away as an RN or an LPN, or something like
13 that. And that's done after a full hearing or admission by
14 the claimant. And there is, you know, written
15 documentation, and so on. And that currently is not
16 considered adequate to be an admission to a -- or conviction
17 by a competent authority or admission to a competent
18 authority, and I certainly think it ought to be.

19 Likewise, I'm sure there are other licensing situations
20 too that would qualify under that situation too.

21 And as long as I have the microphone, just a couple of
22 other things.

23 I think when you talk about who should advance notice
24 be given to, I think the employer should have the right to

25 designate who notice is given to and, you know, with some

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1 kind of an expectation that there would be contingency plans
2 if a given individual is not available, or whatever.

3 But certainly the employer ought to be able to control
4 that and not have the claimant, former employee, have called
5 any Tom, Dick, and Harry in the company and -- that just
6 doesn't make sense. I guess I will stop there.

7 MR. PEARSON: Under the carelessness and negligence
8 that caused serious bodily harm to an employer or fellow
9 employee, you know, I can see where in a case, especially in
10 construction, anytime you are not paying attention, anytime
11 you are doing one task or are concentrating on one portion

12 of a project, somebody else could be put in harm's way.

13 And that's so broad there. So no matter what you are
14 doing, you could be discharged for misconduct because you
15 weren't paying attention to what a coworker was doing, or
16 something like that.

17 MS. LOGUE: I just have two more comments.

18 Along the line of job applications, if the question
19 cannot be legally asked, then I think you would have no
20 argument from us that it should not be included in the
21 determination. That doesn't make any sense. You guys have
22 to uphold the law and so do we. I think that's an easy
23 question to answer. It would have to be one that could be
24 legally asked.

25 On the other, just a comment. Nothing in this is

1 construed to give employers -- I mean, they are not going to
2 run out and all of a sudden just start discharging people
3 for misconduct more often than they do now under this. This
4 is a determination of benefits. It's something that, you
5 know --

6 I mean, just from a small employer to make my editorial
7 comment, the small employers out there are desperate to keep
8 their employees right now and determined to do whatever they
9 can. So there's no intent in this to increase the number of
10 reasons that the employer can discharge. It's to clarify
11 the definition for the determination of benefits.

12 MS. MEYERS: Okay. Thank you.

13 MR. GONZALEZ: In regards to admission of a criminal
14 act, I would think that admission to the employer would be
15 acceptable, generally, if there's a larger company, such as

16 the company I work for. If an individual is involved in
17 illegal activity there is an investigation, and then the
18 evidence is generally made known to the employee. The
19 employee may then -- may or may not admit then that they, in
20 fact -- for example, if it's stealing property they may
21 admit to that. And I would think that's certainly
22 acceptable.

23 MS. MARANVILLE: I think you are faced with a pretty
24 difficult task with this particular provision of the
25 statute. The statute overall has a lot of drafting problems

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1 with it. But in this statute you have a situation in which,
2 as I read it, (1)(c) is incompatible with (3)(a). And the
3 definition in (1)(c) includes "carelessness or negligence,"

4 and that's inconsistent with (3) -- I'm sorry, I said (a); I
5 meant (b), "inadvertence or ordinary negligence." I don't
6 see a way on it's face to reconcile those two.

7 But to the extent that we keep hearing from the
8 employer community that the intent was not to expand the
9 reasons that people can be discharged for misconduct, it
10 would seem to me that (3)(b) is what should control here if
11 the intent is not to expand the definition of misconduct to
12 include negligence. That would be consistent with existing
13 practice.

14 Similarly, I think there's a problem with (2)(e) and
15 (2)(g). (2)(g) limits misconduct to violations of law
16 acting within the scope of employment. (2)(e) does not seem
17 to have any such limitation. But, again, if intent matters,
18 then it sounds like going with the narrower provision is
19 appropriate here.

20 MR. GONZALEZ: Again, item (c): "Carelessness or
21 negligence that causes or would likely cause serious bodily
22 harm to the employer..." I would think that would be
23 applicable to other than bodily harm. In other words, if an
24 employee violates a safety rule that does not necessarily
25 affect or have an impact on body, but let's just say that

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1 the company could suffer a penalty for failing to take
2 certain steps, I would think that will be applicable
3 regardless of somebody being injured or certainly have a
4 huge financial -- not necessarily huge, but a significant
5 financial impact on the employer.

6 MS. CRONE: Gross misconduct need not be a criminal
7 act, correct? It can be this flagrant and wanton conduct or

8 di sregard?

9 MS. MEYERS: Yes.

10 MS. CRONE: And the penal ty for gross mi sconduct i s the
11 eli mi na ti on of wage credi ts, correct? So you could have
12 con duct that i s di shonest, correct?

13 MS. MEYERS: Correct.

14 MS. CRONE: Okay. I'm having trouble reconciling the
15 defi ni ti on of gross mi sconduct wi th that of regu lar
16 mi sconduct. And i t ap pears to me that gross mi sconduct
17 swal lows the en ti re rule so that every thing can be -- or
18 many thi ngs could be gross mi sconduct.

19 MS. MEYERS: I don't know that.

20 MS. CRONE: Okay.

21 MS. MEYERS: Because we are trying to define i t, one,
22 i t has to be a cri mi nal act, which i s one thi ng that they
23 have ad mi tted or have com mi tted or have been con victed of;

24 or the flagrant and wanton disregard -- and the question is
25 -- because there's a difference between the willful and

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1 wanton that's regular misconduct and flagrant and wanton
2 that's gross misconduct. We are assuming there's intended
3 to be a difference and what levels of behavior rise to the
4 standard that that action is a flagrant and wanton disregard
5 to the employer or coworker's interest.

6 MR. SEXTON: Well, to me it's the difference that, "I
7 did it on purpose. I didn't care that I was doing it. Or I
8 enjoyed it." That's all I've got for you.

9 MR. TUVEY: I just want to clarify, it's flagrant "or"
10 wanton. And most of the time that most people have talked
11 they have put it in the conjunctive "and" and it's not.

12 It's flagrant "or" or willful "or." The clarification was
13 that that's a drafting error.

14 MR. SEXTON: It cannot be because up here the
15 definition of misconduct is "willful or wanton." And so you
16 can't say that "wanton" is -- that's the point that Pam or
17 Debbie, I think, was making that it swallows it up, eats it
18 up whole. If you are saying that gross misconduct is
19 wanton, then wanton is already over here in misconduct. All
20 wanton misconduct is -- you got that. But it's got to be
21 flagrant "and" wanton to be gross misconduct. And it's not
22 a typo.

23 MS. BACIGALUPO: I think the clerical error was in
24 (1)(a) where it says "rights, title, and interest" and they
25 decided it should be "rights, title, or interest."

1 MS. MEYERS: Right. Okay. Anything else?

2 MR. DAVE JOHNSON: Just as an observation, the comment
3 was made that all this language was intended to clarify what
4 misconduct actually was. And it appears to me, once again,
5 that just about anything that's done -- if the employer
6 wanted to interpret it according to what's written here, he
7 could find just about anybody in violation of misconduct and
8 therefore be off the hook in terms of having to -- for that
9 person to be eligible for benefits.

10 And, once again, I see this as just another area where
11 the department can expect to see more and more appeals. I
12 would like to think that no employer would use this language
13 to justify turning an employee loose and deny him benefits.
14 But I have a sense that that isn't necessarily the case in a
15 lot of instances.

16 MS. GREINER: Because the penalty for gross misconduct
17 is so severe, I would urge you to continue to interpret the
18 admitted committing of a crime which you have as the same as
19 an admission to a judicial body and not expand it any more.

20 MS. MEYERS: All right. Is it time for a break for
21 lunch. Is an hour enough? Okay, an hour.

22 (Lunch recess taken.)

23 MS. MEYERS: If we don't have anything further with
24 misconduct, I'm going to move on to the job search
25 monitoring program, which is in Section 10. In your

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1 handouts, just for your information, I have provided copies
2 that say "Section 10" on it. It's a packet that's stapled

3 together and handwritten in the corner. Those are just the
4 current job search rules. And I'm just attaching those for
5 your information.

6 The changes in this law, most of them are not -- there
7 are not huge changes. Starting in January of next year, the
8 law says that the department is required to contract with
9 employment security departments in other states to make sure
10 that the individuals who live in those states but draw
11 benefits from the Washington are meeting those job search
12 requirements. It also gives the department authority to use
13 the interactive voice technology system or other electronic
14 means to make sure that they are doing so.

15 We have hired somebody to contact the other states on a
16 project to see which states are willing to do this. Most
17 states are saying no. And so we are looking at other ways
18 to see how we are going to get what we call our interstate
19 claimants, people who draw benefits from Washington but live

20 elsewhere, into the job search program, whether we are going
21 to have them report their job search contact when they call
22 each week; whether we are going to have them send them in
23 when their name pops up on the random monitoring list;
24 whether we are going to have them key them.

25 You know, a lot of people file their claims on the

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1 Internet now where we are going to have them key. We are
2 still exploring how we are going to get that. If other
3 states can't do that, we need to develop a way to have them
4 subject to the monitoring standards as people who live in
5 the state.

6 Currently people right now under the current law are

7 required to make each week three employer contacts or
8 participate in one documented activity at their local work
9 source office, usually that's a training class or something.
10 We will have somebody help you develop your resume or a
11 substantive activity.

12 They are also required to keep a log of their
13 activities. And after they have collected five weeks of
14 benefits, the statute provides for a job search monitoring.
15 We select people on a random basis to get scheduled for
16 appointments. And we tell them to bring their logs in for
17 the last two weeks. And we review those last two weeks. We
18 may issue a directive if they are not doing things right.
19 If they haven't made a job search, we may deny benefits, et
20 cetera.

21 There are only a few people who are exempt from the job
22 search monitoring program. One, of course, is the referral
23 union members. They don't make three employer contacts a

24 week. They comply with the union dispatch requirements.

25 People, of course, in commissioner-approved training

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1 don't have to look for work.

2 People who left work because of domestic violence or
3 stalking, they still have to do an active job search, but
4 they are not subject to the job search monitoring program.

5 And people who are employer attached, they are on
6 standby or their hours have just been temporarily reduced.
7 Those people are still attached to that employer and they
8 don't have to do a work search. Or obviously somebody who
9 is on strike.

10 The one requirement change -- well, there is one little

11 problem I do want to point out in this section. In Section
12 10 (1)(b) where it cites, "Individuals who qualify for
13 unemployment compensation under RCW 50.20.050..." and (2)(d)
14 is lined through, the additional language there, that is an
15 error.

16 Because what they intended to include there was
17 domestic violence and stalking. And they have got the wrong
18 notation there. The code revisor is going to make a note.
19 He was there through all the correct legislation that it was
20 intended to be the domestic violence and stalking. Right
21 now what it refers to is the mandatory military transfers.

22 MR. JEFF JOHNSON: So, again, the section? Could you
23 repeat it?

24 MS. MEYERS: Section 10 (1)(b).

25 MR. JEFF JOHNSON: And what's the reference?

1 MS. MEYERS: Where it lists unemployment compensation,
2 RCW 50.20.050 and (2)(d) is lined out and it has (1)(b)(iii)
3 or (2)(b)(v), it should be (1)(b)(iiii) or (2)(b)(iiii) to
4 get the correct citation in there.

5 Another change in here is that instead of doing three
6 employer contacts or one activity at the work source office,
7 they have to do three employer contacts or three activities
8 at the work source office. They can do a combination. If
9 they did two employer contacts in one, I think we would
10 accept that. But one activity can no longer substitute for
11 all three employer contacts. They have to do three of
12 something during the week.

13 The last piece on the bottom of page 11, top of page 12
14 is a new section that says -- beginning with claims filed

15 January of next year says, "An individual who fails to
16 comply fully with the requirements for actively seeking
17 work..." "shall lose all benefits for all weeks during which
18 the individual was not in compliance."

19 Our original interpretation for this was that when we
20 would call them in for job search monitoring we would have
21 to look at all these. Right now we just have them bring in
22 their last couple weeks. People can be called in at any
23 time during their claim. They could come in with five
24 weeks. They could come in with 30 weeks of job service logs
25 that we would have to go through, which is a significant

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1 work-load issue.

2 Now, at the last meeting some of the suggestions were

3 that we don't do it that way. We could look at a smaller
4 number of weeks, four, three -- I don't know. And if
5 there's a problem then -- say one of these weeks they didn't
6 work at all, then when we identify problems we say, "Come
7 back and bring all of your weeks with you."

8 So I'm interested in hearing your input on that or
9 whether you believe we really have to look at all weeks when
10 a claimant is called in.

11 And our intent when we look at that section is not that
12 -- if they come in and they haven't done a work search, or
13 they haven't met their requirements, obviously they haven't
14 done it, we can deny benefits.

15 But if they come in and just their log isn't completed
16 correctly -- we ask for a lot of information like the
17 business name and address and the person that they spoke to.
18 A lot of people put, like, "Bob" or "counter clerk," or

19 something like that. We aren't going to deny benefits if
20 they did a work search and it's just completed incorrectly.

21 What we would do is give him technical assistance on
22 how to complete the log better next time around. And
23 possibly, if warranted, we would call them back in another
24 couple weeks and say to bring their logs.

25 What we are talking about is denying people that just

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1 don't meet the work search requirements, because they are
2 told repeatedly what their requirements are.

3 Any comment? Questions? Input?

4 MR. JEFF JOHNSON: Any thoughts on how you deal with
5 technical assistance for those workers who are interstate
6 claimants?

7 MS. MEYERS: No. We haven't worked that out. That's
8 something that's going to have to be included in the
9 equation.

10 MS. CRONE: How many states and how many folks are we
11 talking about?

12 MS. MEYERS: The number of interstate claimants --
13 didn't they say that it's about 12,000 at any given time?
14 Something like that.

15 MS. CRONE: And perhaps all 50 states or pretty close
16 to?

17 MS. MEYERS: Of the states we have talked to so far, no
18 one's interested in doing this except possibly Rhode Island.
19 We may have one person there.

20 California has said no. And California is our biggest
21 state where we have interstate claimants. They said no.
22 They are not doing this. Even if we give them money they

23 are not doing it.

24 MR. JEFF JOHNSON: What about other countries like
25 Mexico?

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1 MS. MEYERS: They cannot claim benefits from Mexico.

2 MR. JEFF JOHNSON: They can't?

3 MR. TUVEY: They can be there, Jeff. They just can't
4 claim them.

5 MR. RICHARDSON: How long could I be on standby? Say I
6 work for a company for four weeks and they say to go on
7 standby for three weeks. How long can I be on standby
8 without searching for work or get back on my union's list?

9 MS. MEYERS: Good question.

10 MR. RICHARDSON: How long can that employer ask me to

11 be on standby, I guess?

12 MS. MEYERS: We will put you on standby if you have a
13 definite return-to-work date within four weeks. If the
14 employer asks -- and that's at your request. You say, "My
15 employer is calling me back in three weeks." We will just
16 put you on standby for that period of time.

17 If it's longer than four weeks, up to eight weeks if
18 the employer requests it, we will allow standby. We don't
19 allow standby for more than eight weeks. I think there's
20 two cases at all that we have allowed it in the last four
21 years. It's very, very limited.

22 MR. RICHARDSON: So as long as my employer asks me to
23 be on standby for eight weeks --

24 MS. MEYERS: If you have a return-to-work date and it's
25 not a normal seasonal downtime, like you normally don't work

1 then. You know, that's always the period you are off from
2 work.

3 MR. RICHARDSON: So it's not a seasonal -type job?

4 MS. MEYERS: No. Sometimes things just happen,
5 equipment doesn't come in or something; or to cut costs they
6 are closing down for a month; or they don't start building
7 again until -- their next contract doesn't start for a
8 month.

9 MR. RICHARDSON: Thank you. You answered my question.

10 MS. MEYERS: Anything else?

11 MS. RADER-KONOFALSKI: I just wanted to refer back to
12 the remark you made about at the last meeting that there was
13 a suggestion that you didn't have to look at all of the
14 weeks on all of the people that you randomly check. And I

15 believe that that suggestion was from the business
16 community. But I think, for our part anyway, it sounds like
17 that would be a reasonable way to go as well, to not have to
18 look at all of the weeks of all of the people automatically
19 upfront, but only if there's some indication that you need
20 to look at all of those weeks.

21 MS. MEYERS: And you are right. The suggestion that we
22 not review all weeks upfront was a suggestion from the
23 business community last time.

24 Any further discussion? Comments? Then we will move
25 on.

1 MS. BACIGALUPPO: I deal with the union and with the

2 referral system. So sometimes we get information by
3 reviewing the referral system that someone is not complying.
4 How does that fit into the new writing of the statute?

5 MS. MEYERS: It's not in this statute. Section 10,
6 referral union members are exempt from the job search
7 monitoring program.

8 Now, whether there is also an availability issue is a
9 different statute. Again, and we get back to the whole
10 cause-for-doubting question.

11 MS. BACIGALUP0: So it would still be under the cause
12 for doubting?

13 MS. MEYERS: Yes. Right.

14 MS. BACIGALUP0: Okay.

15 MS. MEYERS: Let's go on to Section 11. Section 11
16 says that an individual's maximum amount of benefits is up
17 to a maximum of 30 weeks of benefits. The new section
18 that's added says, for claims that have an effective date on

19 or after the first Sunday of the calendar month following
20 the month in which the state unemployment rate is 6.8
21 percent or less, benefits drop down to 26 weeks.

22 Our interpretation of this section -- and we have heard
23 from some of the employers that it's not their intent. But
24 I'm letting them, you, all know right now what our
25 interpretation of this is. Because the language on 30 weeks

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1 stays there in Section (1). In Section (b) if we drop to
2 6.8 percent or lower unemployment, it goes to 26. But if it
3 goes back up again to 6.9, we go back up to 30 weeks of
4 benefits. Just a second. Let me finish this section, and
5 then I will get to you.

6 And this is the only subsection where we are talking
7 about doing rules on this. And a couple rules that we were
8 looking at is, one, which unemployment rate do we use?
9 There's nothing that's just called "the unemployment rate."

10 If you look in your packet, the stapled copies
11 handwritten in the corner where it says "Section 11,"
12 there's an Uninsured Unemployment Rate, a Total Unemployment
13 Rate, a Seasonally Adjusted Total Unemployment Rate, and a
14 Three Month Seasonally Adjusted Total Unemployment Rate.
15 There are four unemployment rates, none of which is just
16 called "unemployment rate."

17 And on your charts, which I neglected to grab, if you
18 have a color chart here, the graph -- there are more copies
19 on the back table too. That is a history of the various
20 unemployment rates.

21 Now, the green line is the Insured Unemployment Rate.
22 We are pretty sure that one wasn't intended because that's

23 never been above 6.8 percent, so there's nothing to fall to.
24 It's never been that high.
25 Total Unemployment Rate which is the blue line is -- as

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1 you can see, that spikes up and down a lot. Because every
2 month it's recalculated, and it goes up and down and up and
3 down. And so if we use that one, we would be popping in and
4 out and in and out of 30, 26 all the time.

5 Our recommendation is that we use the Three Month
6 Seasonally Adjusted Total Unemployment Rate because that's
7 more stable. As you can see, it's kind of an orange line,
8 which follows the pink one very closely, but it has far
9 fewer variations than the other two unemployment rates. So

10 that's the one we would like to use. Is just more
11 consistent rather than jumping up and down, back and forth
12 every month.

13 The other piece is that we also -- on the next page
14 after the different definitions there's a little chart in
15 your packet after the definitions of what the different
16 unemployment rates are. And when it talks about the month
17 following in which the department -- the commissioner finds
18 the unemployment rate, we would want that to be defined to
19 mean the month after we get the report. For example, we got
20 the report for May, as you could see, May 1, 2003. It was
21 released on June 20th.

22 And so we would like it, then, to have an effective
23 date of the change as July 1st and not go back to June 1st
24 and have to possibly redetermine everybody's benefit amount
25 for that period of time. So we want to look at the month

1 preceding when we get the report, not the effective date of
2 when the unemployment rate actually dropped.

3 You can see there's a very small gap. Sometimes we
4 only get it after a couple days. It's not like we are
5 waiting three months out to make the change, but we don't
6 want to go back to the beginning of the month after we have
7 sent out thousands of notices telling people how much they
8 are going to get in unemployment benefits.

9 The rest of the changes in that section are not
10 requiring rule making because they are pretty clear. This
11 year in current law we base their weekly benefit amount on
12 the two highest quarters. Next year we will base it on the
13 three highest quarters. And then the year after that we

14 will use the entire base year's wages. But, again, we are
15 not doing rules on those now because the statute is clear
16 for what we have to do.

17 MR. TUVEY: Not having been at the previous session,
18 and not knowing the basis on which anybody may have, you
19 know, made a comment, this may be repetitious. But I guess
20 I would like to call your attention to the second sentence
21 in Section 11(1)(b) where it says, "With respect to claims
22 that have an effective date on or after the first Sunday of
23 the calendar month immediately following the month" --
24 singular "the month." It's not "a month." It's not "any
25 month." It is the singular month in which the commissioner

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1 finds the rate is less than 6.8 benefits shall be payable.

2 I think that if the intent was to make this up and
3 down, yes and no, 30 and 26, it could easily have said "any
4 month" or "a month," but that's not what was written. What
5 was written and what was passed said "the month" in which it
6 goes below, you know, you change. That's a singular event,
7 and I think it should remain that way.

8 MS. BACIGALUP0: I agree with Dale. If you look at the
9 statute the way it was written and then you consider at the
10 few times that it fluctuates above 6.8 you will have people
11 for a short period of time who get 30 weeks for the next
12 year, where someone who applied a week before them or three
13 weeks after them get 26.

14 I believe that the intent was that it would not change
15 and go down to 26 weeks until our unemployment was at a more
16 stable rate and dropped, so as not to effect it while it is
17 at such a high rate.

18 MR. JEFF JOHNSON: First, a question: When we trigger
19 on to federal extended benefits, which of the unemployment
20 rates do we use?

21 MS. MEYERS: The same one.

22 MR. JEFF JOHNSON: Is it the three-month one?

23 MS. MEYERS: The Three-Month TUR.

24 MR. JEFF JOHNSON: It's not the seasonally adjusted
25 one?

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1 MS. MEYERS: It's the Three Month Seasonally
2 Adjusted -- the same one we are proposing to use.

3 MR. JEFF JOHNSON: Second comment. The way I read
4 Section 11 and the way our attorneys read Section 11, when
5 you take sub(1)(a) and (b) together, it's very clear what is

6 meant. When the unemployment rate falls to 6.8 percent or
7 lower of the three months, if it's an adjusted average, that
8 weeks will drop from 30 to 26. But once it goes above that,
9 we are back to 30 weeks.

10 And that's what the language says. Regardless of what
11 someone thinks the intent of this section was, that's what
12 the language says. That's what the law is. That's what we
13 are going to go with.

14 MS. GEE: And I just want to say that I think the
15 intent was very clear to have it drop down to 26 weeks
16 permanently after that trigger point. And I think that if
17 you refer back to hearings, legislative reports, the bill
18 reports, or any discussion on the floor of the House or
19 Senate, then I think that probably would be confirmed.

20 MR. GONZALEZ: I also agree that the intent was to be
21 consistent with the rest of the nation and 26 weeks.

22 MR. JEFF JOHNSON: Not to be argumentative here, but
23 there were no public hearings on this bill. This bill was
24 drafted on the last day of the third special session. The
25 first available copy any of us had a chance to read was

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1 about six hours after the session ended. So there were no
2 public hearings on this.

3 And in terms of legislative intent, there's no one in
4 this room that knows what the legislative intent was on this
5 section. But what is clear is the language of the law.

6 MS. MEYERS: Any other comments before we move on?
7 Thank you.

8 And the last piece of the benefits we are going to talk
9 about is part-time workers.

10 The Section 12 and then partly also 13 says that for
11 claims filed January 2005 and later -- well, I want to
12 clarify. First, right now an individual who is looking for
13 work has to be able and available and actively seeking
14 full-time work.

15 The only exception is for those people that have a
16 disability that prevents them from working full time. If
17 they can still work and there's still jobs available for
18 them, they can still get benefits while they are looking for
19 part-time work. Everybody else is full time.

20 This provides that an individual who worked 17 or fewer
21 hours a week during their base year is considered a
22 part-time worker and can continue to look for part-time jobs
23 and still draw unemployment benefits.

24 So this screens out if you have worked 18 or more hours
25 in any week in your base year, you still have to look for

1 full-time work. This is only those people who have worked
2 17 or fewer hours per weeks.

3 We had a couple of questions about this. Right now, an
4 individual because they have to look for full-time work, if
5 they get a part-time job, we will -- they could still be
6 eligible for partial unemployment benefits if they continue
7 to look for work.

8 Our question here was, you have somebody who's only
9 ever worked 17 hours a week and then gets another job of 17
10 or fewer hours per week and says, "I think I really need to
11 work full time, and I want to continue looking for full
12 time." If they say they are available for full-time work,
13 can they also get part-time employment benefits while they

14 are looking, if they are entitled to any. So that was one
15 question we had.

16 And then if they do get partial benefits, so they are
17 still drawing, are they then considered employer attached
18 and don't have to be looking for work under the job search
19 monitoring program? Well, they would have to look for work.
20 They are just not subject to the job search monitoring
21 program.

22 So those are our questions. Any other questions or
23 comments or input you might have?

24 MS. BENSON: The intent of the legislation was to allow
25 people who are working part time to then look for a

1 part-time job and receive unemployment. But never was it
2 the intent to allow someone to not only work part time, but
3 also get an unemployment check at the same time. That was
4 not ever the intent of it, I don't think, for business or
5 probably labor either, to where you could be drawing two
6 checks at the same time.

7 MS. MEYERS: Well, they can now. Anybody can now. If
8 they get a less-than-full-time job and they still qualify
9 for an amount, they can get it now as long as they are
10 continuing to look for work.

11 MS. BENSON: Right. But part-time employees --

12 MS. MEYERS: Yeah, this is a new situation. If they
13 work part-time --

14 (Whereupon, the proceedings
15 became unreportable due to
overlapping of voices.)

16 MS. BENSON: -- could allow part-time employees to look
17 for part-time jobs.

18 MS. MEYERS: Okay.

19 MS. BENSON: I don't think the intent was to allow
20 part-time employees to look for part-time jobs and draw two
21 checks. That was my understanding.

22 MS. MEYERS: Thank you.

23 MS. BACIGALUPO: The original statute is to replace, to
24 some degree, income that people have lost. So if you have
25 an individual who has consistently been a part-time employee

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1 who then seeks and obtains part-time work, giving them
2 unemployment insurance is not following the original intent
3 of the replacement of lost income. And I think that would
4 speak to how to determine that.

5 MS. MARANVILLE: I just had a background question.

6 What's the basis for your statement that every individual is
7 required to seek full-time work?

8 MS. MEYERS: Case law.

9 MS. MARANVILLE: Do you happen to know what that is?

10 MS. MEYERS: Actually, I think that's a court decision,
11 not a commissioner decision.

12 MR. JEFF JOHNSON: Just a quick question. Has the
13 department or is the department going to make some
14 assessment of how many workers they think would actually fit
15 this rather narrowly construed definition of part-time
16 workers?

17 MS. MEYERS: We have done some analyze of people who
18 have filed claims in the last three years. We have looked
19 at 300,000 claims, and there would be fewer than 1,000.

20 If they have more than 221 hours in a quarter, then
21 obviously one of those weeks they went over 17, so that

22 rules them out. So we only looked at people who had 221 or
23 fewer hours in every quarter of their base year. And that
24 was like 940, or something like that.

25 MR. JEFF JOHNSON: Out of 300,000 claims?

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1 MS. MEYERS: Yes. So it's a small group of
2 individuals.

3 There may be some individuals who will qualify that may
4 have never been allowed to apply before. This may allow
5 college and high school students, as long as they meet this
6 criteria, to receive benefits if they lose their job.

7 Right now academic student are denied if they are not
8 available for work, but that does not apply if they are

9 available for all suitable work for their occupation. If
10 you look at Section 13, suitable work for part-time workers
11 is work of 17 hours a week or less.

12 So if you have a high school or college student who has
13 always worked -- this may not happen very often because
14 their hours probably go up during the summers or Christmas
15 break. If it happens that they have only ever worked 17
16 hours per week or less and they lose their job, even if they
17 are a full-time student they could get benefits while they
18 are looking for another 17-hour-a-week job. They could
19 probably still get benefits.

20 MS. MEYERS: Any other comments?

21 MS. GEE: I was very much involved in the discussion
22 regarding this section of the drafting of the bill because
23 of the industry that I represent with the retail
24 association. It has a lot of part-time workers. And the
25 restaurant association too was involved. And the stated

1 intent that we heard from the governor's office on this from
2 the governor's staff was they requested this section to be
3 put in there to allow people who traditionally work part
4 time to get unemployment if all that is available to them is
5 full-time work.

6 And the stated purpose was like a parent who would only
7 want to work part time so that they could be home with their
8 children in the afternoon hours and that type of thing. So
9 the language was drafted, we thought, very clearly and with
10 the intent -- once we were told that the goal was to make
11 sure that people that traditionally work part time aren't
12 forced into full-time work as they are generally under

13 current law.

14 But we oppose that section anyway.

15 MS. MEYERS: Anything further before we move on to tax?

16 Okay.

17 I'm going to skip to Sections 14, 15, and 16. 14 and
18 15 have a lot of new language about how taxes are
19 determined. And 16 is a new section, again, talking about
20 solvency surcharge. However, we are not considering -- we
21 don't think that rules are required for any of these
22 sections. These sections are pretty clear on their face as
23 to what the charges are going to be for the employers.

24 So unless you have comments about how you think
25 something needs to be clarified on those sections, I'm just

1 going to skip to Section 17.

2 And in these sections I'm going to be asking for
3 assistance from some of our tax staff, because I will be the
4 first to confess that tax is not my area of expertise.

5 Section 17 references employers who want to bring their
6 tax rate down via voluntary contributions. And I'm going to
7 ask Elena if she will please explain what the law is now and
8 what the changes are.

9 MS. PEREZ: Currently the law allows an employer to buy
10 down your tax rate if their rate goes up six rate classes.
11 If their rate goes up six rate classes, they have the option
12 of buying down all the way -- they have to buy down at least
13 two rate classes. And they could buy all the way down to
14 the lowest rate class.

15 In buying down what they do is reimburse the trust fund
16 for the benefits that are paid out plus 10 percent. It was

17 designed to help small employers who might have a
18 significant impact to their tax rate from just one
19 unemployment claim. So that's the way the voluntary
20 contribution program works now.

21 Under 6097 the criteria for voluntary contribution was
22 changed, and it basically doubled all the numbers. So
23 instead of needing to go up six rate classes to be eligible,
24 it has to go up 12 rate classes to be eligible. Instead of
25 having to buy down two rate classes, you have to buy down at

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1 least four rate classes.

2 The situation that we are in right now is that for the
3 2004 tax rate year we are using 20 rate classes. With 2005
4 we use 40 rate classes. The change in the number of rate

5 classes is effective with 2004 not 2005. So what that does
6 is it makes it more difficult for employers to qualify for
7 the voluntary contribution program, because the numbers
8 change, but the range in terms of the possible tax rates
9 remains at 20.

10 So what we would like to do is create some type of a
11 crosswalk where we use essentially the same kind of
12 criteria. We believe that the intent was to make the
13 voluntary contribution program be available to the employers
14 in 2005 like it is today in 2003.

15 So what we would like is to come up with a crosswalk
16 where we would use current calculations in terms of figuring
17 out how many rate classes, and so on, and then apply it to
18 the 2004 tax rates.

19 MS. MEYERS: Questions? Comments?

20 This chart explains it all.

21 MS. GEE: And I just wanted to say that, yes, that is
22 exactly what we were trying to do is make sure that we
23 preserved that for the small businesses. So we would be in
24 agreement with your strategy in implementing that through a
25 crosswalk.

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1 MS. MEYERS: And that was the only rule we were looking
2 at for that section. We were trying to get a crosswalk --
3 clarify how we were going to do the transition.

4 Any other comments? Okay.

5 Let's move on to Section 18 on page 26. The law is
6 amended regarding what we call predecessor employers and
7 successors. Employers who take over -- who purchase or
8 transfer a business from another.

9 There are a couple things we want to define. The
10 statute as amended gives the state the authority to use
11 either the Standard Industrial Classification code or what
12 we call the North American Industry Classification Code
13 System, which by rule we will just make a decision as to
14 when we are going to move to what we call the NAICS code.
15 And the difference it makes is for some employers it could
16 cause a change in their tax rates. Because it classifies
17 them differently in their new codes.

18 But the department really doesn't have a choice of
19 moving this way or not because this is the standard. The
20 SIC codes, Standard Industrial Classification codes aren't
21 used anymore by the Department of Labor. So to make our
22 data and reporting consistent with other states and the
23 federal government, we need to move over to the new code.
24 So we will make a decision as to when we will make that move

25 and then let you know.

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1 But the other piece, specifically regarding the
2 predecessor-successor sections, there's a couple pieces that
3 we would like to have defined. Section (4)(b) talks about a
4 "substantial continuity of ownership or management." And
5 that isn't defined. And I think we believe we need to
6 define that to determine at what point a business is a true
7 successor or just somebody who bought part of a business.

8 The intent of this section, I believe, was to prevent
9 what is called SUDA (phonetic) dumping, where an employer
10 with a high tax rate purchases an employer -- a company with
11 a lower tax rate, and then for two years they get the lower
12 tax rate. So it's intended to address that particular

13 problem.

14 So what we would do is if it's a predecessor-successor
15 and it's a substantial continuity, they would keep their old
16 tax rate.

17 I'm going to ask Keith if I'm misstating anything.

18 MR. BLACK: That's exactly right. It does cover
19 employers where they do a reorganization with the sole
20 intent, or one of the major intents anyway, of lowering
21 their SUDA rate. And they will do it by purchasing an
22 organization that has a very low tax rate. They will form a
23 new organization with that. They will become an employer at
24 that point and bring in their existing company. And by kind
25 of a shell game, they are able to get a lower rate.

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1 The economic reality is not really behind that
2 reorganization, but when you are looking at the letter of
3 the law, they are able to get a lower rate.

4 And by getting a lower rate, that affects us all. The
5 trust fund being self-supportive, that means that every
6 other employer in the state picks up the share of them
7 getting a lower rate.

8 MS. MEYERS: And the other Section (4)(c) it says, "If
9 the successor simultaneously acquires the business...of two
10 or more employers..." what is "simultaneously"? We don't
11 think that it has to occur at the exact same moment in time.
12 What we are proposing is looking at until the overall
13 traction is completed while they are going through a
14 purchase agreement moving from one company to another. And
15 if they are all part of the same general traction, we would
16 consider that simultaneous, correct, Keith?

17 MR. BLACK: That is correct, yes.

18 MS. MEYERS: I'm learning more about tax as we go
19 along. Any other comments or questions on that section?

20 MR. JEFF JOHNSON: Just one suggestion on the
21 substantial continuity of ownership or management. North
22 Carolina did some real good work on this earlier in the
23 year. And I believe their bill passed their legislature and
24 was signed by the governor. They put a fairly prescriptive
25 definition that would cover it. So I suggest that we take a

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1 I look at North Carolina's definition. I would be glad to
2 forward it to the department. And particularly since we
3 actually have some penalties that covers SUDA dumping, that

4 we would want to be as prescriptive as possible so that
5 those who were trying to cheat the system actually pay a
6 penalty.

7 MR. GONZALEZ. The Department of Labor issued a program
8 letter, I believe, and identified about, I think, three
9 states, and they identify what the contingency of ownership
10 is and identify members of the companies. I think we should
11 look at that.

12 MS. MEYERS: We were told at last month's hearing that
13 there was a definition of substantial continuity of
14 ownership or management that was offered as an amendment on
15 the floor of the Senate and it was voted down. And so we
16 have asked for a copy of the Senate debate, and we will look
17 at that too, because we probably wouldn't accept that one if
18 it was voted down.

19 Okay. Well, Section 19 and 20 are pretty minor
20 changes. The only note is on page 29 in the middle of the

21 page where it says subsection (e): "Individuals who qualify
22 for benefits under RCW 50.20.050..." that's got the wrong
23 cite there, again. That is supposed to be domestic
24 violence, so it should be a small "iv" instead of the three
25 "iii." And so, again, that's going to be addressed by a

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1 code revisor's note.

2 Section 21. This should be fun. Benefit charging.
3 First, of course, we have to amend our current benefit
4 charging rules to comply with the statute. And I have those
5 current rules in your packet labeled "Section 21," but I'm
6 not going to go through all those.

7 Our questions and concerns have all recently, for us,

8 focused on subsection (2)(c) as to what exactly that section
9 means or was intended to mean. And we need to get answers
10 to this pretty quickly because we have to start programming
11 our computer system, like, next week.

12 So what that section says is, "When an eligible
13 individual's separating employer is a covered contribution
14 paying base year employer, benefits paid to that individual
15 shall be charged to the experience rating account of only
16 the individual's separating employer if the individual
17 qualifies for benefits under: RCW 50.20.050 (2)(b)(i),"
18 which is leaving work for a bona fide offer of work, and the
19 individual became unemployed after having worked and earned
20 wages in that next job or -- the two small "ii"s go to the
21 deteriorating work conditions, distance moves, safety,
22 illegal activities, reduction in pay or hours, violation of
23 religious beliefs. That's what that is.

24 So what we were told last time that the intent was,

25 particularly when we are talking about the bona fide offer

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1 of work, if a claimant works for one employer and he quits
2 that job and goes to work for the second employer, and the
3 second employer lays him off, that second employer is the
4 separating employer and gets all the cost. That's okay. We
5 understood that.

6 The problem that comes in is, what if there are more
7 employers in the base year? It's not always as clean as
8 that. And what I sent out to you ahead of time was this
9 piece that says "Section 21, Benefit Charging" which had a
10 whole lot of scenarios on there as to who do we charge in
11 each of those different scenarios, because we don't know.

12 We don't know what the intent was, and the language isn't
13 exactly clear to us.

14 So the case I just cited is the one on the bottom of
15 the first page. Claimant worked for Employer A, quit for a
16 job with Employer B, was laid off and filed a claim. The
17 employer is charged and it's B; 100 percent of the charges
18 go to Employer B.

19 The next one: The claimant works for Employer A, quits
20 for a job with Employer B. B lays them off, but they don't
21 file a claim, and then they work for Employer C who lays
22 them off. Who is charged, B and C, or C only? C is the
23 separating employer.

24 MS. BACIGALUPPO: But he's not qualifying under --

25 MS. MEYERS: He didn't under the others either because

1 that's not the reason we qualify him. It's purged. We
2 don't even look at it.

3 The reason they are qualifying for unemployment
4 benefits is because of the layoff. If the quit is more than
5 seven weeks ago, we don't even look at it, assuming they
6 have already earned seven times their weekly benefit amount.
7 So we don't even look at that quit. But they are not
8 qualifying under that in this first scenario either.

9 So in this one our question was, are the charges split
10 between B and C, or are they all to C? All to C is what Jan
11 is saying. And Gina looks confused.

12 Before we get bogged down in too many of these, let's
13 walk through the rest of them.

14 Claimant worked for Employer A, quits for a job with
15 Employer B who lays them off. They get a job with Employer

16 C. Then during their fifth, you know, the lag quarter --
17 which isn't part of their base year but it's the most
18 recent -- C lays them off. And they are rehired by B who
19 then lays them off again. And this happens more often than
20 you would think. Employer B is a base year employer and
21 they are the separating employer. Do they get all the
22 charges?

23 I'm asking for input. We need to know because we have
24 to program our computer to do the charging.

25 MS. BACIGALUPO: When it's a layoff does the employer

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1 who did not give them the offer -- they aren't the sole ones
2 who are being charged, because it's only done to the
3 separating employer if that qualification under them was

4 under 50.20.050. So if they were laid off, they aren't
5 getting it under 050.

6 MS. MEYERS: But that makes it confusing for us,
7 because there's always -- I mean, if a claimant quits for an
8 offer of work, usually they are not getting -- they are not
9 applying for unemployment benefits right away.

10 MS. BACIGALUPPO: Right.

11 MS. MEYERS: And if they worked for that second
12 employer for six months out of the base year and the other
13 six months is the first employer, that second employer did
14 lay them off.

15 So what I'm hearing is that second employer did lay
16 them off, so they get all the charges, and the first
17 employer should not be charged, is what I'm hearing.

18 But the person didn't quit -- didn't qualify for
19 benefits under the voluntary quit statute, because it's been

20 too long. We don't even look at that quit.

21 But if the intent is not to charge that first employer
22 whose job was quit, then we would look at the lay off
23 employer even if they had nothing to do with luring that
24 person away from the other company.

25 MS. MARANVILLE: It seems to me that you only have a

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1 quit for bona fide offer of work where you have a situation
2 in which the person quit one job, took another job, and that
3 job fell through before they purged the quit from the
4 previous job, the quit that would have existed in the
5 absence of the statutory provision. So I would suggest that
6 it's a very narrow provision that would only apply to a very
7 limited number of situations.

8 MR. JEFF JOHNSON: I was about to say it is pretty
9 risky. I would never prescribe intent to the business
10 community. But in the few negotiating sessions that we had
11 with them, ill-fated as they were, what I recall the
12 argument being was that in those cases where quits could be
13 attributed to the employer, the employer initiated the move
14 or the quit -- deteriorating work conditions, and so forth
15 -- that in an attempt to squeeze as much socialized cost out
16 of the system as possible, the last employer, in their
17 language, the separating employer would be the one charged
18 with the full boat, you know, if it was an employer-
19 initiated causal relationship.

20 But, again, I'm not trying to prescribe an intent. And
21 who the hell knows what the legislature meant.

22 MS. MEYERS: Well, part of the question is that it can
23 happen that the person quits two jobs in a year for another

24 job. It can happen that a person may quit a job for another
25 job and then quit that job for deteriorating working

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1 conditions and go on to another one which they quit for
2 another reason. I mean, where do we put the charges?
3 Because this section is not clear to us, and we have to sort
4 it out.

5 AUDIENCE MEMBER: I would just charge AWB and Boeing.

6 MS. MEYERS: Charge them or work with them?

7 AUDIENCE MEMBER: No. Charge them.

8 MS. MEYERS: But this is something we have to get
9 resolved very quickly because -- and maybe we can take it up
10 off line and sit down with some of the business reps to talk
11 about that and work that through in more detail.

12 But as we come up with the different scenarios -- and
13 these sound confusing, but they are not just made up. This
14 type of thing happens when people have a lot of employers
15 during their base year, and we have to figure out what
16 happened. You know, who do we charge?

17 AUDIENCE MEMBER: How much time do we have to review
18 this a little closer?

19 MS. MEYERS: We actually --

20 AUDIENCE MEMBER: I'm not saying -- in days or weeks or
21 whatever. How much time does the department have to come up
22 with rules for this one?

23 MS. MEYERS: For this one, very quickly. We have to
24 start our programming. They are waiting for answers now.
25 They are upset at saying, "No. I have to talk to folks on

1 Thursday, at least."

2 This is going to be a major programming issue, because
3 we have to redo our entire benefitting charging system. So
4 we need answers pretty quickly on how we're going to do
5 this.

6 MR. PEARSON: If I'm working for ABC Construction, and
7 then I go to work for CBA Construction and never miss any
8 time, and then I go on unemployment after that and get laid
9 off, don't they both pay into that?

10 MS. MEYERS: Right.

11 MR. PEARSON: And wouldn't that be the same scenario as
12 your example? Because you went to work -- even though you
13 did quit one job to go to the next -- so you are working for
14 Employer B. They run out of work. You go to Employer C,
15 and they run out of work. Then wouldn't you be in both of

16 those?

17 MS. MEYERS: Current law is that employers are charged
18 in proportion to their share of the base year wages. So if
19 you had three employers in your base year, we would charge
20 all of them.

21 Now, if you quit one of those jobs to go to work for
22 another employer, that employer can request a relief of
23 charges. If we grant it, then those charges go to what we
24 call a pool account where those charges are socialized
25 across with all employers.

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1 And I agree with Jeff. I think the intent of this was
2 to reduce the amount of socialized cost. But what it would

3 do instead is -- say you quit one employer to go to work for
4 the second employer and then you are laid off. Rather than
5 being socialized, the Employer A's costs are not socialized,
6 they are given to Employer B. This is the first time we
7 will actually be transferring one employer's share of the
8 charges to another employer, rather than to a pooled
9 account.

10 The question comes in -- and that's very easy. I
11 understand your point about when they go from one to two and
12 then that's fair. What do you do when there's five
13 employers and two quits? Or what do you do? Who's the last
14 -- or separating employer?

15 And particularly, what do you do when the quit is a
16 reimbursable employer? You quit a reimbursable -- this is a
17 hospital or something like that that doesn't pay taxes.
18 They reimburse the trust fund for benefits paid out to
19 individuals.

20 So they quit a job with a reimbursable employer for a
21 job with a taxable employer and are laid off. Does the cost
22 for the reimbursable go over to the taxable employer?

23 That's never happened before.

24 The separating employer is the problem. It's not
25 defined anywhere. And it's a new term for us, so we have to

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1 define it.

2 MS. GEE: Dale has asked me to do this so --

3 MS. MEYERS: Okay.

4 MS. GEE: Because the language in the bill talks about
5 this separating employer. So the intent was exactly what
6 you outlined, Juanita, about the employer community, in

7 terms of reducing the socialize costs.

8 But in order to determine this, you would look at the
9 separating employer and why that employee left that
10 separating employer. And if it was under the definition
11 under the job deterioration or the bona fide job offer,
12 then -- okay, I'm not making myself clear, am I?

13 MS. MEYERS: Well, you are making yourself clear, but I
14 do have one question. This last employer -- because
15 subsection (c)(i) said they had to have started work for the
16 next employer, so then that automatically -- that person
17 that they quit from is never the last employer.

18 MS. GEE: I know.

19 MS. MEYERS: So they are never the separating employer.
20 The layoff would be the last employer in that case.

21 MS. GEE: Which would be the separating employer.

22 MS. MEYERS: But he didn't quit then, he quit the
23 previous employer.

24 Hold on a second.

25 MR. PEARSON: What happens if I'm the superintendent at

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1 a job site, and I just completed a job for a major
2 contractor, and I take my whole crew with me? They all quit
3 ABC Construction and they go to work for the new contractor
4 and start all over again. That means that everybody that
5 was working for the first contractor is no longer -- they
6 all quit because even though the job was done and they were
7 probably all going to get laid off, they all quit. They
8 don't have the burden, the new contractor does. Is that how
9 you are doing it? And crews do move in full crews.

10 MS. MEYERS: Yes. Right. If you quit one job to go to

11 the next and then you are subsequently laid off, it appears
12 that all the charges, all the costs will go to the second
13 employer, the one you quit for.

14 MS. MARANVILLE: I don't think that's right. Because
15 you charge only the separating employer only where the
16 individual qualifies for benefits under either of the two
17 statutes I cited. And in the case of a layoff, that's not
18 the basis in which they qualify for benefits. Am I missing
19 something?

20 MS. MEYERS: Yes. Because then the language is
21 meaningless.

22 MS. MARANVILLE: No.

23 MS. MEYERS: Because the section says to get the
24 benefit of this for a bona fide offer of work is that they
25 had to have started work for the second employer. So

1 necessarily there's work after the quit.

2 So you are saying it should only be the small group
3 where it's not purged for seven weeks?

4 MS. MARANVILLE: Yes, for one. And then for two, where
5 it's a quit for various reasons.

6 MS. MEYERS: Right. And I understand that.

7 MS. MARANVILLE: Yes.

8 MS. MEYERS: If there's more than one employer -- if
9 they had two bad employers in their base year -- one they
10 quit for illegal activities and one they quit for safety
11 violations -- do we charge them both or just the last one?

12 MS. MARANVILLE: I have always understood that if they
13 took the bona fide job offer, you would only do it in small
14 situations if they got a new job but didn't work at it long

15 enough to purge the disqualification of --

16 (Whereupon, the proceedings
17 became unreportable due to
overlapping of voices.)

18 MS. MEYERS: That's a different --

19 MS. MARANVILLE: So I just think that --

20 MS. MEYERS: That's on how we determine the eligibility
21 of a claimant.

22 MS. MARANVILLE: Right.

23 MS. MEYERS: This is charging to the employer.

24 MS. MARANVILLE: I understand that. But it's saying if
25 the individual qualifies for benefits under that statute.

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1 And I would say that they are not qualifying for benefits
2 under that statute, unless that statute is necessary in

3 order for them to be eligible.

4 MS. MEYERS: That was our original reading of this
5 statute. At the meeting in August we were told clearly by
6 the business community there that their intent was to charge
7 the second employer.

8 MS. MARANVILLE: Well, my reaction to that is maybe
9 they didn't say that. And I think that's simply consistent
10 with a whole lot of situations in this bill where they are
11 saying, "Oh, our intent clearly was..." Well, your intent
12 may have been, but bad job of drafting folks.

13 MS. MEYERS: Okay. Any other input? More input?
14 Comments?

15 And the other piece -- as I did mention, but I don't
16 know if we focused on that -- is we have never made
17 reimbursable employers -- given them relief of charges.
18 Even if the claimant is later found not to be eligible for

19 benefits, the employer is not reimbursed until or unless we
20 collect from the claimant.

21 What this appears to do, it only charges the taxable
22 contribution paying employer. If the employer they quit
23 from goes to work for a taxable employer and that taxable
24 employer is the separating employer because they laid them
25 off, it sounds like the charges from the reimbursable

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1 employer go over to the taxable employer?

2 MR. TUEY: I'm not going to make a comment on that.
3 But I want to take another shot at the last thing that we
4 were talking about, if I can. Is it okay if we come back to
5 that?

6 MS. MEYERS: Certainly.

7 MR. TUVY: Looking at page 30 and then at the top of
8 page 31, that (i) section is intended to cover the situation
9 where somebody hires somebody away and then quickly lays
10 them off, they are the separating employer. It's at that
11 point maybe a layoff, and they are the separating employer.
12 The intent is to give that employer that laid somebody off
13 all of the benefit responsibility.

14 And under (ii) or two, or however you want to
15 characterize it, if the separation occurs because of these
16 reasons that are somehow nominally attributed to the
17 employer because of employer-related reasons, that employer,
18 of course, gets all that.

19 It's the confusion of the one where somebody, you know,
20 quits and goes -- hires away and has this usually phoney
21 couple weeks or week or day or sometimes no work and gets
22 laid off, although the no work isn't covered because it says

23 there's wages. He's worked a day or two and then gets laid
24 off. And so the voluntary quit, you know, then you wouldn't
25 get the benefits charged there, it would all be charged to

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1 the separation of convenience.

2 MS. MEYERS: Okay. In most cases this would never come
3 up, then, if we use what you are saying about quick layoffs
4 or what Deborah has been saying, because there's a lag
5 quarter there.

6 If they have worked fewer than seven weeks for that
7 next employer, then that employer is probably not even if
8 their base year, so the situation becomes mute. The
9 separating employer is not a base year employer.

10 MR. TUEY: But if later on, then, the person files the

11 claim, that employer -- that separation of convenience
12 employer will get it, and there will be -- you know, there
13 will be relief for the person they were working for.

14 MS. MEYERS: So you are saying a year down the road
15 when that employer's charges show up? So not that -- oh,
16 boy, tracking charges.

17 It's not just that claim, but the next claim down. So
18 we would do normal charging for the first year because that
19 last employer isn't part of their base year. You do your
20 normal charging and then the next time around --

21 MR. TUVEY: No. I think the intent here, though, is
22 that it transfers to this separation of convenience
23 employer.

24 MS. BACIGALUP0: He takes over the base year position
25 of the first employer.

1 MS. MEYERS: You are moving him to be a base year
2 employer when he's not?

3 MR. TUVEY: In effect.

4 MS. MEYERS: Whoa, that's not --

5 MR. TUVEY: The notion is to penalize the separation of
6 convenience employer.

7 MS. MEYERS: I understand that.

8 But the original draft of the bill that we had seen
9 said that it was to be charged to the last employer. And
10 our comment that we gave at the time was there's no way to
11 charge a lag quarter employer.

12 We thought that was addressed by when we added "when
13 their employer is a covered contribution base year
14 employer." The statute already defines who is a base year

15 employer. We can't make somebody that's not -- we look at
16 their first four of their last five calendar quarters and
17 who they worked for. We can't just say -- even though you
18 have never worked in your base year, we are saying, "You,
19 ABC Company, we are making you a base year employer," even
20 if you only have worked one month in the quarter for them?
21 I don't think we have the authority to do that.

22 Do we need to sit down with some of the business folks
23 afterwards and work through some of these scenarios?
24 Because I'm not exaggerating. We have to get started on our
25 programming with it being September already. And it has to

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1 be done and tested and in place before January.

2 MR. JEFF JOHNSON: The only thing I would suggest, as
3 you said, to just sit down with the business community. It
4 was bad enough being left out of the process the first time
5 around, so we would like to be included in this as well.

6 MS. MEYERS: It's almost time for break, and we have an
7 hour and a half left with only one other section that we
8 have to go through. Why don't we take a break now for
9 fifteen minutes, come back and do that last section, and
10 then spend the rest of the time we have remaining going back
11 to this subject. Okay?

12 (Recess was taken.)

13 MS. MEYERS: We will move on to Section 22 and then we
14 will come back to those of you who are interested in it or
15 those employers who have a stake in it.

16 Section 22 talks about penalties for employers.
17 Current law says that the department can assess a \$10
18 penalty for employers who file late or incomplete tax

19 reports.

20 Quite Frankly, we don't assess this very often. The
21 new legislation changes the amount an employer is penalized
22 for failure to file current or timely reports from \$10 to an
23 amount set by the commissioner not greater than \$250 or not
24 greater than ten percent of the quarterly contributions,
25 whichever is less. So that is a substantial increase in the

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1 penalty. We certainly think the intent was that every
2 penalty gets a \$250 charge.

3 So we are looking at developing a scale, maybe it's
4 this amount the third offense moving up. And then it would
5 be depending on the extent of the violation, if it's a minor

6 change or if it's a day late, as opposed to six months late,
7 as opposed to the employer maybe didn't -- there are some
8 employers who don't report the Social Security numbers of
9 the employees. There are employees who refuse to report
10 hours. We need those hours because of the way Washington's
11 law is set up.

12 But we are not going to start enforcing it immediately.
13 We are first beginning an education process. There are
14 other sections of the law that require technical assistance
15 for employers.

16 In addition to these hearings, we will have flyers and
17 employer forums that we normally hold with employers for a
18 variety of different educational efforts to let employers
19 know what we mean by "timely;" what they mean by "complete"
20 report; what we mean by "penalty" before somebody is charged
21 that penalty, just to make sure that there's an educational
22 campaign. So someone who has been reporting the same way

23 for ten years isn't hit with a \$250 charge in October of
24 this coming year.

25 What we need to do is, again, as I mentioned, establish

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1 a range of penalties for these. What particular violation
2 should the dollar amounts be for? And we are just going to
3 have to hash that out. And I'm certainly willing to listen
4 to your comments.

5 The new legislation also says that if an employer
6 knowingly misrepresents the amount of their payroll, they
7 are subject to the penalty up to ten times the amount of the
8 difference of what they paid and what they should have paid.

9 And the term "knowingly misrepresents" is not defined.

10 There is a definition in statute which talks about claimant
11 fraud. The element of claimant fraud is in that stack of
12 stapled documents. It's Section 22, and it's the definition
13 of claimant fraud.

14 Again, for employers it's not defined here, but we
15 would like to use a similar type of definition that we use
16 for claimants for employers. Because, again, by definition
17 we would be talking about those who knowingly misrepresent,
18 so it's fraud.

19 And finally, the new statute allows the department --
20 well, if the intent is to try to evade the successorship
21 provisions, the employer is going to be assigned to the top
22 tax rate class for five consecutive quarters, rate class 20
23 or rate class 40.

24 The department is also allowed to charge the employer
25 for reasonable attributed expenses. If we have to go out

1 and find -- investigate what the difference between what
2 they paid and what they should have paid, and we found that
3 they did, in fact, knowingly misrepresent that, in addition
4 to their penalty they will be assessed the audit expenses.

5 Okay. And then we need to just clarify if an
6 individual is charged these different penalties or audit
7 expenses, what do we include, and what is their appeal
8 process?

9 Input? Comments? Questions? On the penalty section.

10 MR. CRUME: Who does the audit? The state?

11 MS. MEYERS: The department does.

12 Any other input? Suggestions?

13 MR. JEFF JOHNSON: With regards to the SUDA dumping

14 penalty and the issue of not charging two tax rates in one
15 year, I would recommend that you take the five-quarter
16 dollar value of that. You take the dollar value of the
17 five-quarter penalty and attribute it to four quarters as a
18 way to avoid two tax rates in one year.

19 MS. MEYERS: Just to let you know, this is one of the
20 pieces that the department may be considering asking for
21 legislation on because we don't have the capability of
22 having two tax rates in one year. So five consecutive
23 calendar quarters just won't work. It can't be done, unless
24 we scrap our entire system and find something new for a big,
25 big cost.

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1 MR. SEXTON: Cool.

2 MS. MEYERS: Any other input? Comments? Okay.

3 Shall we go back to benefit charging, unless there are
4 other questions on the rest of the sections of this bill?
5 Unless you have input or comments that you think are
6 confusing, most of these pieces just relate to the various
7 studies that need to be done; giving the department the
8 authority to adopt rules, which is why we are here; and
9 various other housekeeping-type measures. But none of these
10 did we feel require rule making.

11 MS. METCALF: Is everybody staying for this? I wanted
12 to make sure that if anybody want to leave that we got their
13 comments. But if you are staying, let's go back to Section
14 21. I saw a loss of caucusing going on during the break.

15 MS. MEYERS: So I'm open to input, comments. Who do we
16 charge in each of these various scenarios that we have come
17 up with?

18 MR. TUVEY: We charge Jeff.

19 MS. MEYERS: And when we get into the technical details
20 of benefit charging, I'm going to refer your questions to
21 Elena because she's the expert. Input? Who do we charge?
22 Does anybody know?

23 MS. GEE: I'm just trying to walk through them. I
24 didn't get to the very last one of your scenarios here. But
25 let's see if I can explain it more clearly than I tried to

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1 last time.

2 The bona fide work offer. The intent is that if you
3 leave an employer to go to accept a job from another
4 employer, and then you actually go to work and get laid off
5 by that second employer, regardless if they are a base year

6 employer or not, the second employer would be charged all
7 the unemployment insurance costs. That was the intent as we
8 sat around the table as business groups and discussed who
9 should be charged.

10 So if an employer hired somebody away, but they never
11 went to work, then obviously that wouldn't be the case. Or
12 if an employee quit their previous employer and became
13 unemployed for a short period of time and went to work for
14 another employer, that wouldn't be the case.

15 It's only where I leave Employer A to accept a job with
16 Employer B, I go to work for Employer B and I get laid off.
17 It was the intent to charge the whole unemployment insurance
18 cost to the last employer, what we call the "separating
19 employer."

20 MS. MEYERS: I have a question.

21 MS. GEE: Okay.

22 MS. MEYERS: The language of the section said when the
23 eligible individual's separating employer, and I think you
24 mean the last employer, is a covered contribution paying
25 base year employer they are charged. But you are saying

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1 that even if they are not part of the base year they need to
2 be charged?

3 MS. GEE: And that was our intent that the employer
4 that stole the employee and put him to work and then laid
5 him off and, therefore, caused the unemployment, that was
6 the intent.

7 So if I -- and you know, I have to go -- I have to say
8 the issue of the reimbursable employers didn't really come
9 up specific to this, because we just don't consider them in

10 the fun with us. They are --

11 And therefore, I get why the logic -- the question I
12 have to ask is why would you charge them, that last
13 employer, for reimbursable when they're reimbursable, and
14 they are not paying into the fund, so their costs were not
15 socialized in the beginning?

16 This is all about socialized cost. We wanted to take
17 all those costs that get socialized out. Because an
18 employee leaves one employer, goes to another, and then gets
19 laid off a week or month later. We want to get rid of that
20 socialized cost and charge it to the employer that caused
21 the unemployment.

22 So when I looked at the scenarios, I had to look at if
23 the employee, one, was employed at the time they went to
24 another employer; and, two, if they filed a claim. Because
25 a lot of -- most of your scenarios here, in between

1 employers they didn't file a claim. And so that becomes a
2 mute issue. It is only at the last employment where they
3 filed the claim that you have to look back to the last
4 relationship.

5 So as I walked through here -- so I went through and
6 the first one is B. That's the simple, straightforward one.

7 But on the second page, those next four scenarios to me
8 were all proportional charges, because nowhere along the
9 line did they file a claim until the last employer. And you
10 had to look back to see if they were employed, if that
11 employer actually hired them away from another employer.
12 And in those four scenarios they didn't. They had some
13 unemployment in there. And I just did this real fast going

14 through, and I didn't get --

15 Then I went to the third page. And up at the top was a
16 reimbursable one. I said B would be charged, but with a big
17 question mark on the reimbursable. And, again, I go back to
18 -- reimbursable has never been part of the socialized cost
19 issue anyway. And so I would assume B would be charged for
20 everybody that was in the system, not the reimbursable. And
21 it doesn't tell me if there are more employers during the
22 base year. And then I didn't get to the last ones. Does
23 that make any sense?

24 MS. MEYERS: I understand what you say the intent was.
25 I'm not sure the statute says that.

1 MS. GEE: That's unfortunate for us.

2 MS. BENSON: I just wanted to ask a question here.

3 According to Dooley, Tom Dooley, he said that -- well,
4 basically like Jan said, the majority of these would be
5 proportional. But in the event -- the last employer would
6 be given the burden if they caused something to create a
7 voluntary quit and only then, not a layoff. Because he said
8 that it would just be a voluntary -- that the employer has
9 done something to create a voluntary quit. So if there's an
10 unsafe workplace and that caused a voluntary quit, that
11 employer would be the one to have the burden, otherwise it
12 would be propositional. Is that right?

13 MS. MEYERS: That is clear for deteriorating work
14 conditions. But he did say in the last meeting that if an
15 employee quit one job to go to the next job and then that
16 second job lays them off, that second one is the one to get
17 charged. He did say that.

18 AUDIENCE MEMBER: Would you point to that language,
19 again, that you had question on?

20 MS. MEYERS: Section 21 -- it's page 30 -- (2)(c) at
21 the bottom of page 30: "When the eligible individual's
22 separating employer is a covered contribution paying base
23 year employer..."

24 MS. BACIGALUPO: I'm confused and I don't know if Pam
25 can answer this or who can. In an instance where someone

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1 quits for a job offer and does not go to work, because the
2 employer who offered this very distinct job then backed out,
3 is there nothing put in place to cover that?

4 AUDIENCE MEMBER: Well, it became a quit and then so

5 the employee has to wait for their --

6 MS. MEYERS: No. If they quit for a bona fide offer of
7 work and that job fell through, through no fault of the
8 claimant, then the employer is going to be proportional.
9 They are going to get charged.

10 MS. BACIGALUP0: Now that you say that, though, doesn't
11 bona fide work have the criteria of having worked a certain
12 amount of time? What makes it a bona fide offer?

13 MS. MEYERS: Bona fide offer of work is basically just
14 a good faith offer. If an employer says, "I have work for
15 you. Show up Monday at 8:00." So you quit your other job
16 and you show up Monday at 8:00. And they say, "You know
17 what, we just can't afford you. We changed our mind. Or
18 something happened and I have to hire my brother-in-law."

19 MS. BACIGALUP0: So then that first employer could get
20 relief of benefit charges because it was a quit not
21 attributed to them.

22 MS. MEYERS: They can now.

23 MS. BACIGALUPO: What changes about that?

24 MS. MEYERS: It lists that they get the relief of
25 charges if the person started working. The law changed.

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1 MR. JEFF JOHNSON: Just a question. I think it's on
2 the third page. It's the top one where you work for the
3 reimbursable and then you go work for Employer B.

4 My question under current law, which is what we are
5 under now, if I worked for a reimbursable employer and then
6 I left for work for a taxable employer, and say got laid off,
7 how is that currently dealt with?

8 MS. MEYERS: We charge the reimbursable for their share

9 and the taxable for their percentage of the base year. And
10 even if they quit that job to go to work for the next
11 employer, the reimbursable doesn't get relief for charges
12 they pay.

13 MR. JEFF JOHNSON: And your question on this one is,
14 given this scenario, would the taxable employer pick up the
15 direct charges of the reimbursable?

16 MS. MEYERS: Right. Because the way the statute is
17 worded -- and I know your intent may have been to, you know,
18 get rid of socialized costs. But it says, "... benefits
19 paid to the eligible individual shall be charged to the
20 experience rating account of only the individual's
21 separating employer..." It doesn't say except for
22 reimbursable employers, or something like that. It says
23 benefits shall be charged only to the separating employer.

24 So it sounds like the way it's written that those
25 charges from the reimbursable would go over to the taxable

1 employer, which we have never done before. And which is not
2 against federal law, but it's certainly discouraged.

3 MR. JEFF JOHNSON: Would it be the case if it were
4 reversed? If you worked for a taxable employer first and
5 then a reimbursable and then left, would it be tied back to
6 the taxable employer?

7 MS. MEYERS: No, I don't think so. Because it says the
8 separating employer has to be a covered contribution paying
9 base year employer. So if you quit a taxable and go to a
10 reimbursable and they are the ones that laid you off, they
11 are the separating employer and not a covered base year
12 employer.

13 MR. JEFF JOHNSON: So what happens? Who pays? Does
14 anybody pay?

15 MS. MEYERS: It's proportionate.

16 MR. JEFF JOHNSON: And I guess the other point I had
17 was going back to the definition. Again, these negotiations
18 were not much to talk about, but we did cover this issue
19 several times, and never once was it mentioned that -- and
20 continuously it was argued that the -- you know, in those
21 cases where quits could be attributed to employer causation,
22 that the last employer, regardless of fault, would be
23 charged. But never was it mentioned that that employer
24 could be outside of the base year. That was never brought
25 up. And that's not to say that they didn't bring it up at

1 some other time or with some other set of people.

2 I guess that raises some questions: One, can you do
3 that given other sections of the law? Two, is it in federal
4 conformity? Is it even possible?

5 MS. MEYERS: And I don't know. We have to look at some
6 of this.

7 Now, I will say that Tom Dooley said at the last
8 meeting that the separating employer is not necessarily the
9 last employer. It is the person who caused the unemployment
10 for those reasons.

11 And under that scenario he said if somebody quits one
12 job to go to work with the new employer, and they start
13 working for the new employer and they lay them off, they
14 have caused the unemployment, so they get all of the
15 charges. If they quit an employer for deteriorating work
16 conditions, they are the cause of the unemployment, so they

17 bare the cost of all, even if there were four other base
18 year employers.

19 That's one individual. That's what he was saying was
20 their definition. That's why they said they didn't use
21 "last employer." They used "separating employer."

22 MR. JEFF JOHNSON: But that's a whole new definition of
23 "separation" that doesn't exist in law.

24 MS. MEYERS: I know that. That's why we are here.
25 That's why we are here raising questions. We have no case

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1 law defining the term of a separating employer.

2 MS. METCALF: Can I repeat what I think I have heard?
3 Can you hear me now?

4 I think what Jan was saying -- and tell me if I'm

5 right. I'm going to use you guys. Juanita is working for
6 me, and Susan lures her away with more money and better
7 benefits and wants her to go to work.

8 MS. MEYERS: That wouldn't be hard.

9 MS. METCALF: And then Susan lays her off. Susan gets
10 the charges and I don't. If Susan lays her off the next day
11 and Jeff picks her up, so she never files a claim, now she's
12 working for Jeff and Jeff lays her off, that's when the
13 costs would be distributed. Is that what she said?

14 So the only time when the charges would go to the
15 employer laying off or separating employer is when the
16 person files the claim right after that, rather than another
17 employer coming right in. Did I say that right? Okay,
18 thanks.

19 MS. MEYERS: I understand that. I don't think it
20 resolves some of the other questions.

21 MS. METCALF: I wasn't sure that it did.

22 MR. SEXTON: Well, I'm glad I made it back for this.

23 It sounds like an interesting discussion we all are having
24 here about, what do the words on the paper mean? And do the
25 words on the paper mean what someone thinks they mean?

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1 And I think it's completely irrelevant to bring up
2 negotiations and sitting around a table and what the people
3 in this room thought those words meant at that time or any
4 other time. It's what our legislatures thought those words
5 meant when they voted on these things. And that's what the
6 intent is.

7 And it's unfortunate. It's too bad that, you know,
8 some of the words on these papers here don't work the way

9 that we think that they should work. And it's unfortunate
10 that a lot of this stuff doesn't make sense, and it doesn't
11 work well. But, you know, if we are going by the words on
12 the paper, those are the words on the paper.

13 MS. MEYERS: Okay. Thank you. Back of the room.

14 MR. CRUME: I work in the construction industry, and I
15 have approximately five employers per year. And if I quit
16 Employer A and then go to work for Employer B, and he lays
17 me off. And then I go to work for Employer C, and he lays
18 me off, I think that they should all sort of -- the onerous
19 of paying my benefits should fall on them evenly as opposed
20 to the last person. This luring away thing, it sounds
21 nebulous at best.

22 MS. MEYERS: Thank you. Other input? Questions?
23 Comments? Suggestions? Even with a bigger crowd we are
24 going to get out earlier.

25 MS. GEE: You will be getting some written response.

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1 We are going to get together very quickly. We know your
2 backs are up against the wall. And we will get you some
3 written responses that is a consensus from us and that type
4 of thing to help clarify, because I know this has got to be
5 difficult for you. So that is our intent.

6 MS. MEYERS: We actually need this -- we are still
7 taking input, but we have to start making some decisions
8 tomorrow and next week as to what the rules are going to be
9 and how we are going to construct them, simply because we
10 have to start writing our training materials and instruction
11 materials and programming our system.

12 In fact, we are meeting Monday morning with our systems

13 folks to tell them how we are going to charge in these
14 scenarios. We are going to take your input and the input
15 from last time and meet probably tomorrow to try to hash
16 something out.

17 So if you have comments on this particular section, you
18 might want to fax them or e-mail them. You have my e-mail
19 address or you could fax them tomorrow.

20 AUDIENCE MEMBER: What was the input last time?

21 MS. MEYERS: Basically what I have given you is that it
22 wasn't necessarily the last employer that caused the
23 separation. In the case of the bona fide offer of work, it
24 was the second employer who laid them off that caused the
25 separation and gets the charges.

1 In the other working conditions problems, it's that
2 employer. If they were the last employer and they were also
3 the base year employer, they get 100 percent of the charges.
4 They did say it wasn't their intent to relieve charges for
5 reimbursable employers. And the thought of that didn't come
6 up in the discussions.

7 MS. BACIGALUP0: What did they say about the employer
8 who hired them away from somebody and laid them off and was
9 not a base year employer? What did they address about that?

10 MS. MEYERS: Charges would go as normal. It didn't
11 really come up that much. That particular scenario didn't
12 come up that much. They were more interested in the
13 question of, you know, the reimbursables and what are -- how
14 we interpret it.

15 Because we originally didn't know we were supposed to
16 charge it to the second employer. We thought we were

17 supposed to charge it to the first employer when they quit.
18 They said no. We thought when they quit the first employer
19 and went to work for the second employer we were supposed to
20 charge the first, and they said, "No, no, no. You charge
21 the second." We went back and talked to our attorney and
22 she agreed.

23 But then when we met with some staff and with our staff
24 in systems -- because our systems are a bit of our charging
25 -- our guide system -- we started looking at all of these

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1 various scenarios. And we had a miserable meeting on
2 Thursday last week for half a day trying to hash out who
3 gets charged under what circumstances. And we didn't come

4 up with any answers.

5 Plus, you know, we needed input from the labor and the
6 business communities too. Because it's not 100 percent
7 clear, and we need to decide very quick. And it has
8 ramifications for people as to what they are going to have
9 to pay.

10 MR. CRUME: I think what can be key is, who gets the
11 benefit of my services? And how much benefit did they get?
12 It's based on the number of man hours that they got from me.
13 That's how much they should be charged. I assume that's
14 being done now. Why change it? Why fix it if it's not
15 broke?

16 MS. MEYERS: Anything else? Okay.

17 Just to reiterate, what we are going to do, is take
18 comments from this meeting and from the last meeting, and,
19 again, as I said, we might have another one in Seattle a
20 little later in the month. And we will have time for those

21 opinions and input, but we are going to have to start coming
22 up with some decisions soon, at least preliminary decisions
23 as to how we think the rules will go.

24 What we will do first, as soon as we get an outline and
25 answer to some of these questions and how we are going to

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1 write the rule, we will send out that summary. Like the
2 voluntary quits, we are going to write a rule that says
3 "'reasonable period' means this, 'usually compensation'
4 means this 'usual compensation' means this."

5 And we will send that out for comments first before we
6 actually get it, because it takes a little longer to
7 actually draft the language of the rules. We will keep you

8 posted and give you a heads up as to where we are.

9 I urge any of you who have additional comments that you
10 would like us to consider, which I think several of you do,
11 if you could get them to us next week if possible. It would
12 be very helpful, just because we are moving. We have got a
13 huge change to do a small amount of time to get it done.

14 MS. CRONE: Do you have any sense of how much this is
15 going to cost? And in terms of the fiscal note, I'm sure
16 you are looking at that. And maybe you can't really explain
17 this in this amount of time, but where does the money come
18 from? Does it come from the operating budget or does it
19 come from the UI fund or -- the money to implement?

20 MS. MEYERS: We received a supplemental budget of \$11.5
21 million from the legislature.

22 Because of the cuts we experienced in the UI program
23 funding, we couldn't assume this volume of work in addition
24 to our regular duties and just have it cost out. That \$11.5

25 million is committed already. We are bringing on additional

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1 staff to help us, and those staff have to have computers and
2 desks. There's travel involved with going around and
3 training. We have all kinds of things. And, of course,
4 there's changes to all our forms and everything that has to
5 be done.

6 The job search monitoring piece, if we need to look at
7 all weeks of benefits or depending how extensive that's
8 going to be, there's going to be a cost associated with that
9 because they're going to need more staff for that. It's
10 different if you call them in for a half hour interview or
11 45 minute interview and you review two weeks of claims. As

12 opposed to, if you bring them in and they have to bring all
13 their weeks of claims, then you have to allow enough time to
14 review all 30 weeks. That might take an hour and a half or
15 hours.

16 And, of course, as always because some areas case law
17 didn't change, but there's other areas where it's new,
18 brand-new terms, brand-new definitions.

19 And as the gentleman said over here, there's probably
20 going to be an increase in number of appeals, at least for a
21 while until things are sorted out, both from the employer
22 end, filling out their charging or experience rating or
23 anything else that they have been given or people awarded
24 benefits that they think shouldn't have been, and claimants
25 that are protesting their denials.

1 Sometimes we get a lot of claimants who appeal ,
2 although it's clearly the law, but they just don't think
3 it's fair. They just want an opportunity to tell somebody.

4 That happens with extend benefits, for example. You
5 know, people didn't qualify for extended benefits because
6 their benefit year ended a week before the extended benefit
7 deadline. We had 300 or 400 appeals on those.

8 Now, there's nothing we can do about it, and there's
9 nothing that the law judge can do about it. But it gives
10 them a forum to appeal or to express their viewpoint.

11 And that could still happen with people who say, "I got
12 a 20 percent cut in pay, and you say I'm not eligible for
13 unemployment benefits. I think that's wrong and I'm going
14 to appeal it."

15 Now, it's clearly in the statute. It's not something

16 the department has direction over, but they certainly have
17 the opportunity -- they have the right to appeal and to tell
18 their concerns to the administrative law judge. And we
19 anticipate there will be some of that.

20 So we do anticipate the appeals cost will go up. I
21 don't think we have costed that out. Have we, Judy?

22 MS. JOHNSON: No.

23 MS. BACIGALUPO: What about the savings that will come
24 about from the changes?

25 MS. MEYERS: The savings are to the trust fund, not the

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1 department's expenses. The department's administrative
2 expenses aren't impacted by those cuts and benefits or
3 anything. Those are savings to the UI trust fund and to the

4 employers and tax rates, and so on. But it's not a savings
5 to the department. The specific nature of Pam's question
6 was the cost to the department of implementing.

7 MS. BACIGALUP0: Right. I guess I'm asking, though,
8 because the cost to implement it is the tax payers', and the
9 savings and benefits is also the tax payers'. So the tax
10 payers pay into that fund who pay out unemployment
11 insurance.

12 MR. JOHNSON: Different tax payers.

13 MS. BACIGALUP0: It is different costs. But I'm just
14 trying to see if we were saving somewhere.

15 MS. MEYERS: They can't hear you in the back, so please
16 speak into the microphone.

17 MS. BACIGALUP0: The question was asked how much it's
18 going to cost the department. And you have answered that
19 there's \$11 some million budgeted for that. How much money

20 is expected to be saved from contribution payments in the
21 change of how benefits are paid out?

22 MS. MEYERS: That I don't know. I'm sure somebody has
23 worked it out, but I don't have that with me.

24 MS. METCALF: I would just like to make a little
25 clarification. We were given some implementation money. It

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1 doesn't mean it won't cost us more. We will have that
2 information later, but that's what's been allotted to us.

3 MR. JEFF JOHNSON: I don't know what the answer to that
4 question is, but I do know this: All citizens of this state
5 through general revenue are being asked to pay for the
6 implementation of this law. So it takes money away from
7 education, healthcare, and other services. The savings goes

8 to one class of people and that's employers.

9 MS. MEYERS: Was there a comment in the back? No.

10 Okay. Anything else?

11 Well, again, please, you all have my e-mail address.

12 If you can get me your comments next week, that will be

13 really, really helpful. And you will certainly get an

14 opportunity along the way to provide comments and additional

15 input. Please make sure you have all signed in on the

16 sign-up sheet because we are going to use those to notify

17 people -- send out results for these meetings, as far as the

18 outline.

19 Thank you for attending.

20

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(Whereupon, at 3:25 p.m.,
the proceedings concluded.)

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